



# **COUNTY OF LOS ANGELES**

## **CHIEF INFORMATION OFFICE**

500 West Temple Street  
493 Kenneth Hahn Hall of Administration  
Los Angeles, CA 90012

**JON W. FULLINWIDER**  
CHIEF INFORMATION OFFICER

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May 10, 2005

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

### **APPROVAL OF MICROSOFT MASTER SERVICES AGREEMENT (ALL DISTRICTS - 3 VOTES)**

#### **IT IS RECOMMENDED THAT YOUR BOARD:**

1. Approve and instruct the Chair of the Board to execute the attached proposed sole source Master Services Agreement (Agreement) with Microsoft Corporation (Microsoft) for Premier Support Services (PSS) and Microsoft Consulting Services (MCS). This Agreement will be effective upon execution by your Board thru December 31, 2008. This Agreement also provides for two (2), two-year extensions, upon approval by your Board. The total annual amount authorized for expenditure under this Agreement shall not exceed \$2,000,000.
2. Delegate to the Chief Information Officer, pursuant to the terms of the Agreement, the authority at his discretion to approve and execute Statements of Services (SOS) (the specific work orders and necessary change orders to existing work orders) on behalf of County departments for Premier Support Services.
3. Delegate to the Chief Information Officer the authority to execute Statements of Services for Microsoft Consulting Services having a maximum sum of \$100,000 or less.

## **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The Microsoft Master Services Agreement represents a strategic Agreement for the County. Approval by your Board will allow County departments to have access to technical resources that can only be obtained from Microsoft to assist with planning and ensuring the sustaining viability of services reliant on Microsoft technologies. Microsoft products serve an essential role in the effective operation of the County's computer systems. These services include Internet/Intranet websites, SQL databases, document file/retrieval, network printing, email/calendar services, electronic spreadsheets, Internet web browsing, word processing, presentation development, directory services, and personal computer/server operating systems. The proposed Master Agreement provides a structure that streamlines and standardizes the acquisition process for these services across the County.

## **BACKGROUND**

County departments have been acquiring Microsoft services through individually negotiated contracts approved by the Purchasing Agent. While this worked for a couple of years, as departments continued to renew their contracts, ultimately they ran up against the threshold that would require a Board-approved contract due to the aggregate value of the contract. Additionally, negotiating with Microsoft for each contract proved time-consuming and did not ensure a standardized approach for pricing services or adherence to County terms and conditions. Because of the widespread use of Microsoft products on personal computers and servers throughout the County, the ability to have access to Microsoft's priority support and professional services is important in obtaining timely problem resolution and in maximizing product capabilities.

A recent survey (February 2005) of all departments indicated that eight (8) departments consisting of the Chief Administrative Office (CAO), Fire Department (FD), Department of Health Services (DHS), Internal Services Department (ISD), Department of Mental Health (DMH), Public Library (Library), Department of Public Works (DPW) and the Sheriff's Department (Sheriff) have identified a need to contract with Microsoft for either Consulting Services or Premier Support Services in Fiscal Years 2004-05 and/or 2005-06.

By approving this Agreement, your Board is establishing the terms and conditions under which Microsoft services will be acquired. The County is not obligated to expend any funds until a SOS (Statement of Services) is executed. Each SOS will be governed by the terms and conditions set forth in the proposed Master Agreement. Microsoft Consulting Services SOSs over \$100,000 shall be sent to your Board for approval by the respective department. The maximum, annual expenditure under this Agreement will not exceed two million dollars (\$2,000,000). Funding will be obtained from departmental budgets. The Administrative provisions of the Agreement require confirmation that funding is available before the individual SOS is executed. All projects established with MCS consulting will be required to be entered into the County's Information Technology Tracking System (ITTS), with defined deliverables (project milestones), planned completion dates and related costs identified. My office will

provide centralized oversight related to the initiation of projects and in the review of performance and billing, with semi-annual reports provided to your Board on the usage of this Agreement.

### **IMPLEMENTATION OF STRATEGIC GOALS**

The services proposed within the Master Agreement support the County Strategic Plan Goals for Service Excellence (Goal 1, Strategy 2: Implement programs to improve the efficiency, quality and responsiveness of County services to all residents) and Organizational Effectiveness (Goal 3, Strategy 6: Complete the implementation of one or more standard technology components for facilitating electronic information-sharing between County departments to support the County Strategic Plan and Departmental missions). As described above, these services allow departments to better plan, design, implement, manage, and support the computer systems using existing and planned Microsoft technologies. As the County continues to deploy Microsoft products to support improvements in service delivery, the proposed Master Agreement will play an important role in allowing the departments to achieve the County's strategic goals.

### **FISCAL IMPACT/FINANCING**

Expenditures over the term of the agreement and the expenditures in any given year will remain within each department's budgeted appropriation for such services. Funds for payment of work performed in future fiscal years will be subject to appropriation by your Board. Expenditures under this agreement will vary from year to year based on the needs of County departments, not to exceed two million dollar (\$2,000,000) annually. Microsoft Consulting Services SOSs over \$100,000 shall be sent to your Board for approval by the respective department, while Premier Support Services can be executed by the CIO regardless of SOS sum. The Administrative provisions of the Agreement require confirmation that funding is available before the individual SOS is executed.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The attached Agreement has been approved as to form by County Counsel. In accordance with your Board's policy, outside counsel has also participated in the negotiation, reviewed the agreement, and concurs with the recommendations. Except as detailed below, the Agreement contains the Board's required contract provisions including those pertaining to compliance with the County's Child Support Program, consideration of GAIN participants for employment, and Jury Service requirements. This Agreement is not subject to the County's Living Wage Program.

Microsoft is providing unique services and resources in support of their proprietary products. These specialized services and resources are not available from County personnel. Accordingly, this is not a Proposition A contract, and, it is exempt from the Living Wage provisions of County Code.

### **CONTRACT PROCESS**

Microsoft is a sole source provider for the services sought. Microsoft is uniquely positioned to provide the required technical support and consulting services. Microsoft Premier Support Services and Microsoft Consulting Services can draw from a wide range of internal Microsoft resources, including the actual software developers for the products upon which the County depends. Using their experience with other large Microsoft customers worldwide, PSS and MCS can also provide insight into best practices and recommendations for realizing the most from the County's current investment in Microsoft technologies and assistance in planning for new business demands.

The following are areas within the negotiated Agreement depart from the County's preferred position:

1. **Limitation of Liability** – The negotiated Agreement limits Microsoft's liability for damages sustained by the County on each Statement of Service (work order) to \$400,000 or three times the amount paid on the applicable Statement(s) of Service whichever is greater. This limitation of liability does not apply to damages caused by gross negligence or wilful misconduct caused by Microsoft and/or its agents, obligations under Section 23, Confidentiality, obligations of indemnification throughout the Master Agreement, and obligations of the parties arising from a breach of the other party's intellectual property rights. In addition, Microsoft has insisted on excluding all liability for consequential damages for such things as business interruption and the County's loss of revenues.
2. **Indemnification and Insurance** – Microsoft limits its indemnification of the County from claims by third parties to claims for damages to tangible real and personal property, bodily injury, and death for which it is legally liable to the third party. This does not provide the County with the ability to recover above the limit of liability for the loss of non-tangible assets, such as data loss, caused by Microsoft. Microsoft has required that it be self insured and that its insurance be limited.
3. **Most Favoured Public Entity** – The "Most Favoured Public Entity" clause typically in County contracts was not accepted by Microsoft after much deliberation, and is therefore not in the proposed Agreement. However, Microsoft did agree that in the event its Public Sector hourly rates decrease, the lower rates will be extended to the County for all existing and subsequent SOSs.



4. **Cost of Living Adjustment (COLA)** – Microsoft would not accept your Board's COLA policy and standard contract language. Accordingly, the Agreement provides that on the first and subsequent anniversary of the Effective Date, the fees for PSS will be increased by the percentage increase Microsoft has applied to its published Public Sector Rates for the then-current Fiscal Year but not to exceed three percent. The increases shall be applied only to PSS SOSs executed after the applicable anniversary. With respect to MCS, the Agreement contains no provision for rate increases, except for warranty claim investigative services when Microsoft determines upon investigation that there was no deficiency. The rate increase in this situation will be to Microsoft's then current Public Sector Published rate for Senior Consultant, but not to exceed five percent over the last rate. All MCS projects will be performed on a fixed price basis. These provisions were aggressively negotiated, but Microsoft would not compromise its position to have the contractual right to increase fees, as their costs increase. Microsoft did represent it does not always implement the annual rate changes.
5. **Warranty and Acceptance Testing** – The Agreement provides separate provisions for PSS and the MCS. For PSS there is an indefinite warranty period. Microsoft agrees to correct deficiencies in work performed for an unlimited period. However, the MCS work orders are warranted for a period of 90 days following the successful completion of a mutually agreed to acceptance test. If a deficiency discovered during the warranty period cannot be corrected, Microsoft will return the fees paid by the County for the deliverable.
6. **Prohibition on Open Source Software** – Microsoft insisted that the County agree that it will not knowingly incorporate, modify, combine and/or distribute its (Microsoft) proprietary computer source code with any other non-Microsoft computer source code. The intent of this provision is to mitigate any situation which would subject Microsoft's code to the requirement that its source code be disclosed to third parties or licensed to third parties.

Although these terms and conditions were aggressively negotiated over 18 months, the provisions as described above represent the best positions that could be reached by the parties involved. This Master Agreement is submitted to your Board with this office's belief that it represents a minimal risk position for the County. The nature of this Master Agreement is structured around a series of small Premier Support and/or Microsoft Consulting Statement of Services (work orders) as needed by County departments. It is estimated that they will typically range from \$50,000 to \$200,000 and therefore do not individually represent a large financial risk to the County for the services performed.

I recommend that your Board approve the identified exceptions and accept the terms and conditions that were negotiated, based upon the identified business need for this Agreement. The Master Agreement expressly includes Microsoft's acknowledgement that the County is not required to issue any SOSs under this Agreement.

The Honorable Board of Supervisors

May 10, 2005

Page 6

### **IMPACT ON CURRENT SERVICES/PROJECTS**

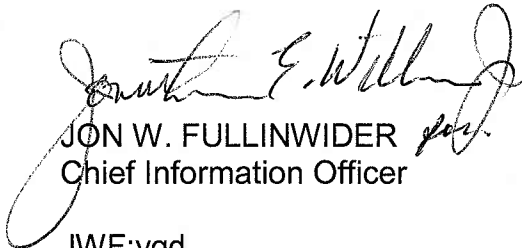
The proposed Agreement will provide County departments access to Microsoft Premier Support Services (PSS) and Microsoft Consulting Services (MCS). These are unique technical services from Microsoft, for Microsoft technologies/products, which are used in mission and non-mission critical business systems throughout the County.

### **CONCLUSION**

Your Board's approval of the proposed Microsoft Master Services Agreement will ensure County departments have access to needed support and professional services that can only be provided by Microsoft.

Following execution by your Board, please return to my office three (3) executed copies of the Agreement.

Respectfully submitted,



JON W. FULLINWIDER  
Chief Information Officer

JWF:ygd

c: Each Department Head  
Chair, Information Systems Commission

P:\Drafts\Microsoft MSA Board Letter FINAL.DOC

**MASTER SERVICES AGREEMENT**

**BY AND BETWEEN**

**COUNTY OF LOS ANGELES**

**AND**

**MICROSOFT CORPORATION**

**FOR**

**PREMIER SUPPORT SERVICES**

**AND**

**AS-NEEDED MICROSOFT CONSULTING SERVICES**

## TABLE OF CONTENTS

### Page

|      |   |         |
|------|---|---------|
| 1.   | APPLICABLE DOCUMENTS .....                            | Page 3  |
| 2.   | ENTIRE AGREEMENT .....                                | Page 3  |
| 3.   | DEFINITIONS .....                                     | Page 4  |
| 4.   | TERM .....  | Page 8  |
| 4.1  | Initial Term. ....                                    | Page 8  |
| 4.2  | Option to Extend. ....                                | Page 8  |
| 4.3  | Notice of Expiration of Term. ....                    | Page 8  |
| 5.   | MAXIMUM CONTRACT SUM .....                            | Page 8  |
| 5.1  | General. ....   | Page 8  |
| 5.2  | Notice to County. ....                                | Page 8  |
| 6.   | SERVICES .....  | Page 9  |
| 6.1  | Descriptions of PSS and MCS. ....                     | Page 9  |
| 6.2  | Process for Issuance of Statements of Services. ....  | Page 9  |
| 6.3  | Identification of Personnel. ....                     | Page 9  |
| 6.4  | Changes in Personnel. ....                            | Page 9  |
| 7.   | PSS / MCS STATEMENTS OF SERVICE .....                 | Page 10 |
| 7.1  | General. ....   | Page 10 |
| 7.2  | Changes to SOS. ....                                  | Page 10 |
| 7.3  | Secure Website for Work. ....                         | Page 10 |
| 8.   | ADMINISTRATION OF CONTRACT – COUNTY .....             | Page 11 |
| 8.1  | County Program Director. ....                         | Page 11 |
| 8.2  | County Program Manager. ....                          | Page 11 |
| 8.3  | County Project Director. ....                         | Page 12 |
| 9.   | ADMINISTRATION OF CONTRACT – MICROSOFT .....          | Page 13 |
| 9.1  | Microsoft’s Contract Manager. ....                    | Page 13 |
| 9.2  | Microsoft’s Consulting Engagement Manager – MCS. .... | Page 14 |
| 9.3  | Microsoft’s Support Engagement Manager – PSS. ....    | Page 15 |
| 9.4  | Microsoft’s Contracts Executive – PSS. ....           | Page 15 |
| 9.5  | Microsoft’s Contracts Specialist – MCS. ....          | Page 16 |
| 10.  | SUPPORTABILITY OF PRODUCTS .....                      | Page 16 |
| 10.1 | Discontinuation of Support. ....                      | Page 16 |
| 10.2 | Disposition of Product. ....                          | Page 16 |
| 10.3 | Notice to County Regarding County Environment. ....   | Page 16 |
| 10.4 | Unsupportable Product. ....                           | Page 17 |
| 11.  | FEES AND RATES .....                                  | Page 17 |
| 11.1 | Fee Schedules – ....                                  | Page 17 |
| 11.2 | Fees Fully Burdened. ....                             | Page 18 |
| 11.3 | Responsibility for Taxes. ....                        | Page 18 |
| 11.4 | Cost or Pricing Data. ....                            | Page 18 |

|       |  |         |
|-------|--|---------|
| 12.   | INVOICES AND PAYMENT .....                                       | Page 18 |
| 12.1  | Invoicing – PSS. ....  | Page 18 |
| 12.2  | Invoicing – MCS. ....  | Page 19 |
| 12.3  | Submission of Invoices – PSS. ....                               | Page 19 |
| 12.4  | Required Information on MCS Invoice and PSS Reporting Form. .... | Page 19 |
| 12.5  | Invoice / Decrement -Related Disputes. ....                      | Page 20 |
| 12.6  | Retention of Data. ....  | Page 20 |
| 12.7  | Prohibition on Costs and Expenses. ....                          | Page 20 |
| 12.8  | Amounts Not Specified. ....                                      | Page 20 |
| 13.   | COUNTY’S OBLIGATION FOR FUTURE FISCAL YEARS .....                | Page 20 |
| 14.   | BUDGET REDUCTIONS .....  | Page 20 |
| 15.   | MICROSOFT OBLIGATIONS .....                                      | Page 21 |
| 15.1  | Performance. ....  | Page 21 |
| 15.2  | Normal Working Hours. ....                                       | Page 21 |
| 15.3  | Monitoring and Control. ....                                     | Page 21 |
| 15.4  | Gratuitous Efforts. ....   | Page 21 |
| 15.5  | Pro Bono Services. ....  | Page 21 |
| 15.6  | Local Office. ....   | Page 22 |
| 15.7  | Working Environment. ....  | Page 22 |
| 15.8  | County Facilities. ....  | Page 22 |
| 15.9  | Quarterly Meetings. ....   | Page 22 |
| 15.10 | Presentation to County. ....                                     | Page 23 |
| 15.11 | Participation by County in Microsoft Programs. ....              | Page 23 |
| 16.   | MICROSOFT’S REPRESENTATIONS, WARRANTIES AND COVENANTS ...        | Page 23 |
| 16.1  | PSS Warranty. ....   | Page 23 |
| 16.2  | MCS Fixed Price Services Warranty. ....                          | Page 23 |
| 16.3  | Compliance with Applicable Laws. ....                            | Page 24 |
| 16.4  | MCS SOSs – Compatibility. ....                                   | Page 24 |
| 16.5  | No Legal Proceedings. ....                                       | Page 24 |
| 16.6  | Disabling Devices. ....  | Page 24 |
| 16.7  | Accuracy. ....   | Page 25 |
| 16.8  | No Limitation. ....  | Page 25 |
| 16.9  | Disclaimer. ....   | Page 25 |
| 17.   | INDEPENDENT CONTRACTOR STATUS .....                              | Page 25 |
| 17.1  | No Agency or Partnership. ....                                   | Page 25 |
| 17.2  | Responsibility for Compensation. ....                            | Page 26 |
| 17.3  | Workers’ Compensation Liability. ....                            | Page 26 |
| 17.4  | Compliance with Rules and Regulation of Premises. ....           | Page 26 |
| 18.   | BACKGROUND AND SECURITY INVESTIGATIONS .....                     | Page 26 |
| 18.1  | Background Investigations. ....                                  | Page 26 |
| 18.2  | Access to Court Facilities. ....                                 | Page 26 |
| 18.3  | Expenses for Investigations. ....                                | Page 27 |
| 18.4  | Standards. ....  | Page 27 |
| 18.5  | Denial or Termination of Access to Facilities. ....              | Page 27 |

|      |   |         |
|------|---|---------|
| 19.  | SUBCONTRACTING .....  | Page 27 |
| 19.1 | Prior Approval Required. ....   | Page 27 |
| 19.2 | Request for Approval. ....  | Page 28 |
| 19.3 | Responsibility for Subcontractor Performance and Payment. ....        | Page 28 |
| 19.4 | Non-Waiver. ....  | Page 28 |
| 19.5 | Responsibility for Payment. ....                                      | Page 28 |
| 20.  | PROHIBITION AGAINST DELEGATION AND ASSIGNMENT .....                   | Page 29 |
| 20.1 | County's Consent Required. ....                                       | Page 29 |
| 20.2 | Assignment or Delegation Without County's Consent. ....               | Page 29 |
| 21.  | REPLACEMENT OF MICROSOFT PERSONNEL .....                              | Page 29 |
| 21.1 | Notice of Intention to Reassign Personnel. ....                       | Page 29 |
| 21.2 | Provision of Resume; Interview. ....                                  | Page 29 |
| 21.3 | Background Investigations. ....                                       | Page 30 |
| 22.  | CHANGES AND AMENDMENTS .....  | Page 30 |
| 22.1 | Written Amendment Required. ....                                      | Page 30 |
| 22.2 | Changes in Terms Required by Board of Supervisors. ....               | Page 30 |
| 22.3 | Exercise of Option to Extend Term and Change Forms and Exhibits. .... | Page 30 |
| 22.4 | SOS Change Notices. ....  | Page 31 |
| 22.5 | Extended Master Agreement Expiration Date. ....                       | Page 31 |
| 23.  | CONFIDENTIALITY .....   | Page 31 |
| 23.1 | Confidential Proprietary Information. ....                            | Page 31 |
| 23.2 | Confidential Statutory Information. ....                              | Page 34 |
| 23.3 | HIPAA Requirements. ....  | Page 34 |
| 24.  | DISCLOSURE OF INFORMATION .....                                       | Page 34 |
| 25.  | OWNERSHIP AND LICENSE .....   | Page 35 |
| 25.1 | Pre-existing Work. ....   | Page 35 |
| 25.2 | License Grant. ....   | Page 35 |
| 25.3 | Restrictions On Use. ....   | Page 35 |
| 25.4 | Open Source License Restrictions. ....                                | Page 36 |
| 25.5 | No Product Provided. ....   | Page 36 |
| 26.  | LIMITATION OF LIABILITY .....   | Page 36 |
| 26.1 | Limitation on Liability. ....   | Page 36 |
| 26.2 | Exclusions to Limitation on Liability. ....                           | Page 36 |
| 26.3 | Liability for Indirect, Consequential or Incidental Damages. ....     | Page 37 |
| 27.  | INDEMNIFICATION AND INSURANCE .....                                   | Page 37 |
| 28.  | WORK APPROVAL TESTING AND ACCEPTANCE .....                            | Page 41 |
| 28.1 | Acceptance Criteria. ....   | Page 41 |
| 28.2 | Process for Acceptance Test. ....                                     | Page 41 |
| 28.3 | PSS Acceptance Tests. ....  | Page 42 |
| 28.4 | PSS Reporting Form – Acceptance of Decrement. ....                    | Page 42 |
| 28.5 | MCS Acceptance Tests. ....  | Page 42 |
| 28.6 | Notice of Deficiencies. ....  | Page 43 |
| 28.7 | Correction of Deficiencies. ....                                      | Page 43 |
| 28.8 | Time for Correction of Deficiencies. ....                             | Page 43 |

|      |   |         |
|------|---|---------|
| 28.9 | Remedy. ....  | Page 43 |
| 29.  | DISPUTE RESOLUTION .....  | Page 43 |
| 29.1 | Continued Performance. ....   | Page 44 |
| 29.2 | Costs. ....   | Page 44 |
| 29.3 | Escalation. ....  | Page 44 |
| 29.4 | Limitation on Use of Dispute Resolution. ....                               | Page 44 |
| 30.  | NOTICES .....   | Page 45 |
| 30.1 | Notices To County. ....   | Page 45 |
| 30.2 | Notices To Contractor. ....   | Page 45 |
| 31.  | TERMINATION FOR INSOLVENCY .....  | Page 46 |
| 32.  | APPLICATION OF BANKRUPTCY CODE SECTION 365(n) .....                         | Page 46 |
| 33.  | TERMINATION FOR DEFAULT .....   | Page 46 |
| 34.  | FORCE MAJEURE .....   | Page 47 |
| 35.  | TERMINATION FOR IMPROPER CONSIDERATION .....                                | Page 48 |
| 36.  | TERMINATION FOR CONVENIENCE .....   | Page 48 |
| 37.  | CONFLICT OF INTEREST/CONTRACTS PROHIBITED .....                             | Page 49 |
| 38.  | NONDISCRIMINATION IN EMPLOYMENT .....                                       | Page 49 |
| 39.  | ASSURANCE OF COMPLIANCE WITH CIVIL RIGHTS LAWS .....                        | Page 50 |
| 40.  | MINORITY/WOMEN PARTICIPATION AND OWNERSHIP .....                            | Page 51 |
| 41.  | EMPLOYMENT ELIGIBILITY VERIFICATION .....                                   | Page 51 |
| 42.  | CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS ...                  | Page 51 |
| 43.  | COMPLIANCE WITH SUPPORT REQUIREMENTS .....                                  | Page 51 |
| 44.  | ACKNOWLEDGMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT<br>ENFORCEMENT ..... | Page 52 |
| 45.  | NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME<br>CREDIT .....     | Page 52 |
| 46.  | CONTRACTOR RESPONSIBILITY AND DEBARMENT .....                               | Page 52 |
| 46.1 | Responsible Contractor. ....  | Page 52 |
| 46.2 | Debarment. ....   | Page 53 |
| 47.  | RECORDS AND AUDITS .....  | Page 53 |
| 48.  | COUNTY AUDIT SETTLEMENTS .....  | Page 54 |
| 49.  | FAIR LABOR STANDARDS .....  | Page 54 |
| 50.  | RESTRICTIONS ON LOBBYING .....  | Page 54 |
| 50.1 | Federal Funds Projects. ....  | Page 54 |
| 50.2 | County Projects. ....   | Page 54 |
| 51.  | FEDERAL ACCESS TO RECORDS .....   | Page 55 |
| 52.  | ACCESS TO COUNTY FACILITIES .....   | Page 55 |
| 53.  | AUTHORIZATION WARRANTY .....  | Page 55 |
| 54.  | GOVERNING LAW / VENUE .....   | Page 55 |
| 55.  | COVENANT AGAINST CONTINGENT FEES .....                                      | Page 56 |
| 56.  | COMPLIANCE WITH APPLICABLE LAW .....  | Page 56 |
| 57.  | COMPLIANCE WITH JURY SERVICE PROGRAM .....                                  | Page 56 |
| 58.  | RECYCLED BOND PAPER .....   | Page 57 |
| 59.  | SAFELY SURRENDERED BABY LAW .....   | Page 57 |

60. COUNTY’S QUALITY ASSURANCE PLAN ..... Page 58

61. SEVERABILITY ..... Page 58

62. NO MINIMUM REQUIREMENT ..... Page 58



## **Master Services Agreement**

**THIS Master Services Agreement** for Premier Support Services and Microsoft Consulting Services ("Master Agreement") is made and entered into as of the Effective Date by and between the COUNTY OF LOS ANGELES, a political subdivision of the State of California ("County"), and Microsoft Corporation, a Washington State corporation ("Microsoft").

**WHEREAS**, County desires to establish a Countywide Master Services Agreement for provision of Premier Support Services ("PSS") whereby County Departments and Affiliates as defined herein, shall have access to Premier Support Services for their Microsoft Products through a coordinated access point, the County's Chief Information Officer; and,

**WHEREAS**, County desires to have a coordinated centralized mechanism for acquiring appropriate Microsoft Consulting Services ("MCS") on an as-needed basis for individual technology-related projects that County Departments and Agencies are considering in furtherance of their missions and County's Strategic Plan; and,

**WHEREAS**, coordinated centralized access to Premier Support Services and Microsoft Consulting Services will enable County Departments and Affiliates to more efficiently acquire support for their Microsoft Products; to expedite recovery from system deficiencies and failures; to resolve integration and implementation issues with Microsoft Products and other applications, hardware and other software; and, to plan and carry out projects in furtherance of their missions and County's Strategic Plan; and,

**WHEREAS**, Premier Support Services and Microsoft Consulting Services, under this Master Services Agreement, shall be acquired by County Departments and Agencies on an individual basis through Statements of Service ("SOS") under the administration and with the approval of County's Chief Information Officer; and,

**WHEREAS**, County acknowledges that licenses for Microsoft Products, as defined herein, are acquired through separate licensing agreements executed by the County's Purchasing Agent; and,

**WHEREAS**, County's Chief Information Officer shall act as the central coordinator to administer and track all projects and Services performed under this Master Services Agreement; and, with the cooperation and assistance of County Departments and Agencies acquiring Services hereunder, shall monitor the performance of such Services; and,

**WHEREAS**, this Master Services Agreement is for Services that are technical and highly specialized, are provided on an intermittent basis, cannot be performed by current County employees or by individuals who could be recruited and, accordingly, is authorized under the provisions of California Government Code Section 31000.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and for good and valuable consideration, the parties agree as follows:

**1. APPLICABLE DOCUMENTS**

This base document, together with Exhibits A1 through F, as set forth below and attached hereto, shall comprise and are hereinafter referred to collectively as the "Master Agreement." In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any Task, Deliverable, Service, or Other Work, or otherwise between this document and the Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to this document and then to the Exhibits in the order listed:

Exhibit A1 – Microsoft Premier Support Services [PSS] Description  
Exhibit A2 – PSS Fee Schedule  
Exhibit A3 – PSS Statement of Services [SOS] Issuance Process  
Exhibit A4 – PSS Certificate of Acceptance  
Exhibit A5 – PSS Reporting Form  
Exhibit A6 – PSS Escalation List  
Exhibit A7 – PSS Sample Statement of Services [SOS]  
Exhibit A8 – PSS Sample Invoice  
Exhibit A9 – PSS Change Order Form

Exhibit B1 – Microsoft Consulting Services [MCS] Description  
Exhibit B2 – MCS Fee Schedule  
Exhibit B3 – MCS Statement of Services [SOS] Issuance Process  
Exhibit B4 – MCS Certificate of Acceptance  
Exhibit B5 – MCS Project Status Report  
Exhibit B6 – MCS Escalation List  
Exhibit B7 – MCS Sample Statement of Services [SOS]  
Exhibit B8 – MCS Sample Invoice  
Exhibit B9 – MCS Change Order Form

Exhibit C – Microsoft Employee Acknowledgment, Confidentiality and Copyright Assignment Agreement  
Exhibit D – Microsoft EEO Certification  
Exhibit E – Business Associate Agreement (HIPAA)  
Exhibit F – Child Support Compliance Certification

**2. ENTIRE AGREEMENT**

Except for the underlying agreements and/or purchase orders which procured the products which are to be serviced under this Master Agreement, this Master Agreement constitutes

the complete and exclusive statement of understanding between the parties and supersedes any and all previous agreements, whether written or oral, and all communications between the parties relating to the subject matter of this Master Agreement. No change to this Master Agreement shall be valid unless prepared pursuant to Section 22, "**CHANGES AND AMENDMENTS**," and executed by the parties' authorized officials.

### 3. **DEFINITIONS**

The section headings in this Master Agreement are for convenience and reference only, and are not intended to define the scope of any provision thereof. The following terms and phrases in quotes and with initial letters capitalized shall have the following specific meaning when used in the Master Agreement, as defined in this Section 3:

- 3.1 **"Acceptance"** shall mean the County's issuance of a written Acceptance Certificate.
- 3.2 **"Acceptance Certificate"** shall mean the notice County shall issue to Microsoft (i) for PSS indicating that Microsoft has resolved the subject problem or issue to County's satisfaction; and (ii) for MCS, County's Acceptance of Microsoft's Services. Acceptance Certificates shall be issued in accordance with the processes and in the form set forth in Exhibits A4 for PSS and B4 for MCS.
- 3.3 **"Acceptance Criteria"** shall mean the mutually agreed upon standards set forth in the applicable SOS.
- 3.4 **"Acceptance Test"** shall mean the mutually agreed upon process and procedures by which the parties will determine that the Service Deliverables meet the Acceptance Criteria. Services Deliverables for PSS SOSs in which no Acceptance Test shall be applied shall be deemed accepted upon completion and delivery to County, and County's review and issuance of an Acceptance Certificate in the form set forth in Exhibit A4.
- 3.5 **"Change Order Form"** shall mean a change order duly authorized under the terms of this Master Agreement against an open SOS. Change Order Forms shall be in the format set forth in Exhibits A9 for PSS and B9 for MCS.
- 3.6 **"Confidential Proprietary Information"** shall have the definition set forth in Subsection 23.1 ("Confidential Proprietary Information").
- 3.7 **"Confidential Statutory Information"** shall have the definition set forth in Subsection 23.2 ("Confidential Statutory Information").

- 3.8 **"County"** shall mean the County of Los Angeles, and may also refer, as the context requires, to County Affiliates who enter into a SOS under this Master Agreement.
- 3.9 **"County Affiliate"** shall mean any governmental entity for which the Board of Supervisors is the governing board.
- 3.10 **"County Department"** shall mean a department or any other Administrative Body as defined in the Los Angeles County Code Title 2 – "Administration" or otherwise created by action of the Board of Supervisors. For purposes of this Agreement, "County Department" shall also include as the context requires, "County Affiliate."
- 3.11 **"County's Program Director"** shall mean County's Chief Information Officer who is designated hereunder as the individual with overall responsibility for the administration of this Master Agreement on County's behalf as set forth in Subsection 8.1.
- 3.12 **"County's Program Manager"** shall mean the individual designated by County to administer the operations under this Master Agreement as set forth in Subsection 8.2.
- 3.13 **"County's Project Director(s)"** shall mean the individual(s) designated by County with responsibility for day-to-day supervision of any and all Services provided by Microsoft under SOS issued under this Master Agreement as set forth in Subsection 8.3.
- 3.14 **"Day" or "Days,"** whether used with initial capitalization or not, whether singular or plural, shall mean calendar day(s) and not business day(s), unless otherwise expressly specified.
- 3.15 **"Decrement"** shall mean debit against a prepaid fee.
- 3.16 **"Deficiency" or "Deficiencies"** shall mean any of the following: (i) nonconformance with the specifications and functional requirements in an applicable SOS, (ii) defect(s) in any Deliverable relating to design, materials or workmanship, (iii) error(s), omission(s), or failure(s) to meet any standards set forth in any SOS, or (iv) other problem(s) which result in the Deliverable(s) not meeting the Acceptance Criteria established in the applicable SOS.
- 3.17 **"Deliverable" or "Deliverables"** shall be used interchangeably with "Services" and shall mean any task, deliverable, service, work, Service Deliverable, or other consideration to be provided to County by Microsoft pursuant to this Master Agreement.
- 3.18 **"Developments"** shall mean any computer code or materials (other than Products or Pre-existing Work) developed by Microsoft (alone or in collaboration with County) and provided to County in the course of performance of this Master Agreement.

- 3.19 **"Disabling Device(s)"** shall have the definition set forth in Subsection 16.6.
- 3.20 **"Effective Date"** shall be the date of approval of this Master Agreement by County's Board of Supervisors.
- 3.21 **"Fixes"** shall mean any Product-related bug fixes, workarounds, patches, beta fixes or beta builds Microsoft provides.
- 3.22 **"Fiscal Year"** shall mean the twelve (12) month period beginning July 1<sup>st</sup> and ending the following June 30<sup>th</sup>.
- 3.23 **"Maximum Contract Sum"** shall have the meaning set forth in Section 5.
- 3.24 **"Microsoft Affiliates"** shall mean any legal entity that Microsoft owns, which owns Microsoft, or which is under common ownership with Microsoft.
- 3.25 **"Microsoft Consulting Services" or "MCS"** shall mean those Services Microsoft shall provide as set forth in this Master Agreement and described in Exhibit B1 (**"Microsoft Consulting Services Description"**).
- 3.26 **"Microsoft Personnel" or "Microsoft Employees"** shall mean individuals performing work on SOSs on behalf of and under the control of Microsoft and includes, but is not limited to, employees or individuals otherwise retained by Microsoft to perform work on SOSs.
- 3.27 **"Microsoft's Consulting Engagement Manager"** shall mean the individual designated by Microsoft with responsibility for the day-to-day supervision of Microsoft's satisfactory performance of its responsibilities under SOSs issued under this Master Agreement and to administer Microsoft Consulting Services [MCS] operations under this Master Agreement as set forth in Subsection 9.2.
- 3.28 **"Microsoft's Contracts Executive"** shall mean the individual designated by Microsoft with overall responsibility of administration of Premier Support Statements of Services [PSS] on Microsoft's behalf as set forth in Subsection 9.4.
- 3.29 **"Microsoft's Contract Manager"** shall mean the individuals designated by Microsoft with overall responsibility for execution on Microsoft's behalf of all SOSs and all other contract documents, except this Master Agreement and any amendments thereto as set forth in Subsection 9.1.
- 3.30 **"Microsoft's Contracts Specialist"** shall mean the individual designated by Microsoft with overall responsibility of administration of MCS SOSs on Microsoft's behalf as set forth in Subsection 9.5

- 3.31 **"Microsoft's Support Engagement Manager"** shall mean the individual designated by Microsoft with the overall administration of the Master Agreement for PSS engagements with the County as set forth in Subsection 9.3.
- 3.32 **"Non-code Developments"** shall mean all non-code based written materials other than Products, or Pre-existing Work, developed by Microsoft exclusively or in collaboration with County and provided to County in the course of performance under this Master Agreement.
- 3.33 **"Normal Working Hours"** means the following work schedules, utilized by the individual County departments, excluding County holidays:
- "5/40," which is normally 8 hours per day, Monday through Friday, with starting and ending times departmentally established; or
- "9/80," which is a flexibly arranged 9 hours on each of 8 Working Days in a given 2-week period, plus 8 hours arranged, per department policy, on the ninth Working Day; or
- "4/40," which is 10 hours on each of 4 fixed Working Days each week, with starting and ending times departmentally established
- 3.34 **"Pre-existing Work"** shall mean all intellectual property rights to and ownership rights of any computer code or materials (other than Products) developed or otherwise obtained by or for Microsoft or Microsoft's affiliates, or County or County's Affiliates, independently of this Master Agreement.
- 3.35 **"Premier Support Services" or "PSS"** shall mean those Services Microsoft shall provide as set forth in this Master Agreement and described in Exhibit A1 (**"Microsoft Premier Support Services Description"**).
- 3.36 **"Product(s)"** shall mean any materials comprising commercially-released, pre-release or beta products (whether licensed for a fee or no charge) that Microsoft makes available to County for license under a separate license agreement applicable to that Product as published by Microsoft, its affiliates, or a third party.
- 3.37 **"Service Deliverable(s)"** shall mean (i) any computer code or materials, except Fixes of Products, Microsoft leaves with County at the conclusion of Microsoft's performance of the services; (ii) Microsoft's Pre-existing Work licensed to County perpetually and the Non-code Developments; or (iii) Microsoft's Pre-existing Work licensed to County perpetually and the Developments.

3.38 **"Statement of Service" or "SOS"** shall mean any work order(s) duly authorized under Section 6 (**"SERVICES"**) and Section 7 (**"PSS / MCS STATEMENTS OF SERVICE"**) of this Master Agreement, and Exhibits A1 through A9, and Exhibits B1 through B9, hereto.

3.39 **"Services"** shall be used interchangeably with **"Deliverable(s)."**

#### **4. TERM**

##### **4.1 Initial Term.**

The initial term of this Master Agreement commences upon the Effective Date and continues through December 31, 2008, unless otherwise terminated or extended, in whole or in part, as provided in this Master Agreement.

##### **4.2 Option to Extend.**

Microsoft hereby grants to County the irrevocable option to extend this Master Agreement for two (2) year extensions beyond the initial term. County's option shall be exercised by County's Board of Supervisors, in any increment, by written Notice delivered to Microsoft not less than thirty (30) days prior to the applicable expiration date.

##### **4.3 Notice of Expiration of Term.**

Microsoft shall notify County's Program Director in writing when this Master Agreement is within six (6) months from the expiration of the initial term and, where applicable, any successive term as provided for in Section 30 (**"NOTICES"**).

#### **5. MAXIMUM CONTRACT SUM**

##### **5.1 General.**

The Maximum Contract Sum under this Master Agreement shall be the total maximum monetary amount which may be paid by County to Microsoft. The total amount which may be paid by County to Microsoft during each calendar year (January 1 through December 31.) of the term of this Agreement shall not exceed two million dollars (\$2,000,000).

##### **5.2 Notice to County.**

Microsoft shall notify County's Program Director in writing as provided in Section 30 (**"NOTICES"**) when County has paid Microsoft seventy-five percent (75%) of the Maximum Contract Sum under this Master Agreement.

## 6. SERVICES

### 6.1 Descriptions of PSS and MCS.

Microsoft shall provide PSS and MCS in accordance with the terms and conditions of this Master Agreement. The PSS available from Microsoft under this Master Agreement are set forth in Exhibit A1 ("**Microsoft Premier Support Services Description**"). The MCS available from Microsoft under this Master Agreement are set forth in Exhibit B1 ("**Microsoft Consulting Services Description**").

### 6.2 Process for Issuance of Statements of Services.

PSS shall be acquired by individual County Departments and County Affiliates through issuance of an SOS that has been approved and executed by County's Program Director. MCS shall be acquired by individual County Departments and Affiliates through issuance of an SOS. For MCS SOSs in an amount up to \$100,000, the SOS shall be approved and executed by County's Program Director. For MCS SOSs over \$100,000, the SOS shall be approved and executed by the Board of Supervisors. Following approval and execution, Each SOS shall be issued to Microsoft by County's Program Director in accordance with the procedures set forth in Section 7 ("**PSS / MCS STATEMENTS OF SERVICE**"), Exhibits A3 ("**PSS Issuance Process**") and B3 ("**MCS Issuance Process**").

### 6.3 Identification of Personnel.

The Services Microsoft shall provide to County are personal professional Services and County is entering into this Master Agreement with Microsoft in reliance on Microsoft itself or its approved subcontractors providing all Services. For this reason, Microsoft shall be required to identify by name all Microsoft Personnel who shall, in any material way, be responsible for the tasks, Deliverables, Services, or other work Microsoft will provide under this Master Agreement and under any SOS issued hereunder.

### 6.4 Changes in Personnel.

Microsoft shall consult with and obtain County's prior written approval of any change in Microsoft Personnel it wishes to make as required in Section 21 ("**REPLACEMENT OF MICROSOFT PERSONNEL**"). County may require Microsoft to remove and replace any Microsoft Personnel upon County's request.



## 7. PSS / MCS STATEMENTS OF SERVICE

### 7.1 General.

When a County Department has identified a need for Services, it shall first consult with County's Program Manager to decide how best to fulfill that need under this Master Agreement and then complete a draft SOS, which it shall submit to the Program Manager for review using Exhibit A7 ("**PSS Sample SOS**") for PSS, or Exhibit B7 ("**MCS Sample SOS**") for MCS. Microsoft shall not be authorized to begin work under an SOS and County shall not be obligated to pay Microsoft for any work done under an SOS unless and until County's Program Director has approved the SOS and it has been issued to and executed by Microsoft's Contracts Manager, as provided in this Section 7 and Exhibits A3 ("**PSS Issuance Process**") and B3 ("**MCS Issuance Process**"). Microsoft shall provide to County a completed Exhibit C ("**Microsoft Personnel Acknowledgment and Confidentiality Agreement**") for each of its Microsoft Personnel performing work under this Master Agreement. Pursuant to Subsection 23.2 ("**Confidential Statutory Information**"), Microsoft shall provide these Agreements to County's Program Manager prior to the issuance of any SOS. In lieu thereof, Microsoft may provide such Acknowledgment on behalf of such personnel, and in that event, Microsoft shall indemnify, defend, and hold harmless the County from any and all liability arising from any unauthorized disclosure of Confidential Statutory Information by any Microsoft employee, agent, or subcontractor, whether within the course and scope of employment or otherwise, and with or without cause, and Microsoft shall take all reasonable steps to prevent such personnel from continuing to disclose such Confidential Statutory Information.

### 7.2 Changes to SOS.

After an SOS is executed by County Program Director, changes to the SOS must be made through the Change Order Process described in Subsection 22.4 ("**SOS Change Notices**").

### 7.3 Secure Website for Work.

Microsoft and County may utilize a secure website for authorized County Personnel and Microsoft Personnel to view all work, both in progress and completed. The site may be organized by SOS and may include, but not be limited to, each and every SOS, each and every Change Notice and Change Order, as well as all of the following: approved invoices, project plans, design documents, web pages, user documentation, and technical documentation.

## 8. ADMINISTRATION OF CONTRACT – COUNTY

### 8.1 County Program Director.

County's Program Director shall be Jon W. Fullinwider, County's Chief Information Officer. County shall notify Microsoft in writing if it changes its Program Director. Program Director shall, on behalf of County, have the authority and responsibility to confirm by administrative oversight and monitoring of Microsoft's services provided hereunder, to assure that:

- a) County Departments utilize the Master Agreement to acquire either PSS or MCS only as is provided herein;
- b) Microsoft provides Services and Deliverables as required by the PSS and MCS SOSs County enters into with Microsoft;
- c) Each SOS is duly approved and executed by the Program Director, or at his direction, by the Program Manager and, once approved and executed, is issued to Microsoft's Contracts Manager for Microsoft's implementation;
- d) All directives of County's Board of Supervisors are implemented;
- e) All issues, problems, or disputes which cannot be resolved by County's Program Manager under Section 29 ("**DISPUTE RESOLUTION**") are addressed; and,
- f) Any Debarment proceeding is conducted in accordance with the provisions of Chapter 2.202 of the Los Angeles County Code.

### 8.2 County Program Manager.

County's Program Manager shall be Jonathan Williams. County shall notify Microsoft in writing if it changes its Program Manager. County's Program Manager, on behalf of County, has the administrative responsibility to assist County's Program Director and Project Directors as they may require in fulfilling their respective duties by:

- a) Jointly, with County's Project Directors, developing each SOS in accordance with requirements set forth in Exhibit A3 ("**PSS Issuance Process**") for PSS or Exhibit B3 ("**MCS Issuance Process**") for MCS;
- b) Forwarding the SOS to County's Program Director for approval;
- c) Jointly, with County's Project Directors, reviewing, and approving or rejecting all Microsoft Personnel proposed to provide Services under each SOS, and once approved, each change of Microsoft Personnel that Microsoft proposes or County requests;
- d) Assuring that each proposed SOS conforms to the guidelines which are set forth in this Master Agreement for PSS and MCS;
- e) Negotiating and recommending changes to any approved SOS by use of the Change Notice process provided in Subsection 22.4 ("**SOS Change Notices**") and, when assured that the proposed changes meet County's requirements under

this Master Agreement, forwarding any proposed change to County's Program Director for approval;

- f) Reviewing all Microsoft produced usage reports under the PSS SOS to (i) verify that County's Project Director authorized each decrement to that PSS SOS by issuing an Acceptance Certificate, and (ii) follow-up as necessary upon such review;
- g) Monitoring and tracking all MCS Acceptance Certificates and, upon receipt of each Microsoft MCS invoice, determining whether County's Project Director appropriately issued an Acceptance Certificate for the Services Microsoft billed to County and conducting follow-up activities as necessary;
- h) Meeting with Microsoft's Contracts Manager, as required, to assure the orderly and satisfactory progress of Microsoft's work on each outstanding SOS; and,
- i) Taking action to resolve any issues, problems, or disputes that were not resolved by County's Project Director.

### 8.3 County Project Director.

County's Project Director shall be identified by name in each SOS and shall be the Director of the County Department receiving Services under the respective SOS. County's Project Director shall, in accordance with the provisions of this Section 8

("Administration of Contract – County") and Exhibit A3 ("PSS Issuance Process") and Exhibit B3 ("MCS Issuance Process"), approve each proposed SOS for the subject Department and shall be authorized to delegate, as necessary and appropriate, SOS-related operational responsibilities to appropriate managers within the department. County Project Directors and their delegates shall:

- a) Prepare a draft SOS for PSS or MCS which identifies the Department's technical and functional requirements and forward the draft SOS to County's Program Manager for review and final approval by County's Program Director;
- b) Review, approve or reject, with the concurrence of County's Program Manager, all Microsoft Personnel proposed to provide Services under each SOS and, once approved, review, approve or reject each change of Microsoft Personnel that is proposed by Microsoft or requested by County;
- c) Carry out the day-to-day operational and administrative responsibilities of the Master Agreement by assuring that County has the appropriate representation at all meetings and keeping and updating records of program activity;
- d) Recommend and negotiate changes to each executed SOS by use of process set forth in Subsection 22.4 ("SOS Change Notices"), as well as Exhibit A9 ("PSS Change Order Form") or Exhibit B9 ("MCS Change Order Form") and, when assured that the proposed changes meet County's requirements under this Master Agreement, forward the proposed change to County's Program Manager for review and, thereafter, approval by County's Program Director;

- e) Participate in all Acceptance Testing or other review for compliance by Microsoft with the terms and conditions of Service delivery under the SOSs to which County's Project Director is assigned;
- f) Identify Deficiencies and assure that those Deficiencies are corrected by Microsoft as provided in this Master Agreement and, where not corrected, notify the Program Manager so that County may pursue its rights and remedies as provided under this Master Agreement regarding the Deficiencies Microsoft does not correct;
- g) Issue Acceptance Certificates to Microsoft when appropriate and as required by this Master Agreement;
- h) Monitor and report on Microsoft's SOS performance and provide regular status reports as required by County's Program Manager;
- i) Approve or disapprove all Microsoft SOS invoices for which he/she is Project Director, and forward the invoice to County's Program Manager for review, approval and payment or disapproval;
- j) Inspect any and all equipment, services, and/or other work provided by or on behalf of Microsoft; and,
- k) Coordinate, meet, and/or confer with Microsoft's Contract Manager on a regular basis with respect to all work being performed on active tasks and deliverables and provide direction to Microsoft regarding County policy, information and procedural requirements.

## 9. ADMINISTRATION OF CONTRACT – MICROSOFT

### 9.1 Microsoft's Contract Manager.

Microsoft's Contract Manager shall be David Gallagher. Microsoft shall notify County in writing of any proposed change in its Contract Manager in accordance with the provisions of Section 21 ("**REPLACEMENT OF MICROSOFT PERSONNEL**"). Microsoft's Contract Manager shall have the responsibility for all contractual and legal aspects of Microsoft's performance of its obligations under this Master Agreement. Microsoft's Contract Manager shall carry out these responsibilities by the following activities:

- a) Reviewing and approving all final contract documents on behalf of Microsoft, and specifically, as to each Microsoft proposal to provide either PSS or MCS, Microsoft's Contract Manager shall assure that the Microsoft proposal is fully responsive to the SOS which County's Program Director submitted to Microsoft's Contract Manager;
- b) Approving each Microsoft proposal, submitting it to County's Program Director, and meeting and conferring with County's Program Director as required to resolve any issues County has regarding the responsiveness of Microsoft's proposal;
- c) Meeting and/or conferring with Microsoft's Consulting Engagement Manager and County's Program Director and, as requested by County, with County's Project Directors on a regular basis;

- d) Resolving Microsoft business, contractual and administrative matters relating to this Master Agreement that cannot be resolved by Microsoft's Support Engagement and Consulting Engagement Managers;
- e) Resolving all issues, problems, or disputes which may arise which cannot be resolved by Microsoft's Support Engagement and Consulting Engagement Managers under Section 29 ("**DISPUTE RESOLUTION**"); and,
- f) Receiving all notices pursuant to this Master Agreement and taking such other steps as may be necessary to fulfill Microsoft's responsibilities hereunder.

## 9.2 Microsoft's Consulting Engagement Manager – MCS.

Microsoft's Consulting Engagement Manager for MCS shall be Michael Newman. Microsoft shall notify County in writing of any proposed change in accordance with the provisions of Section 21 ("**REPLACEMENT OF MICROSOFT PERSONNEL**"). Microsoft's Consulting Engagement Manager shall be responsible for the overall administration of this Master Agreement for Microsoft's consulting engagements with the County. Microsoft's MCS Consulting Engagement Manager shall carry out such responsibilities through the following activities:

- a) Assuring that Microsoft responds fully and completely to County's needs for MCS by developing the scope of and then drafting and finalizing the SOS to meet the County's needs as stated in the proposal County submits to Microsoft, obtaining County's acceptance of the Services Microsoft proposes to provide, and providing oversight of Microsoft's provision of those Services;
- b) Assuring that Microsoft Personnel perform their assigned work as required;
- c) Drafting, finalizing, delivering and conducting all MCS Acceptance Testing when Services are completed;
- d) Taking such corrective action as is necessary when Deficiencies in Microsoft's Services are identified by either Microsoft or County;
- e) Representing Microsoft in the Dispute Resolution procedure as required in Section 29 ("**DISPUTE RESOLUTION**");
- f) Assuring that Microsoft fulfills its reporting responsibilities in every respect regarding project activity;
- g) Meeting and conferring on a regular basis with the County Project Directors assigned to the SOSs for which the Microsoft Contracts Specialist is responsible to review all work being performed on active SOSs;
- h) Providing regular status reports to Microsoft's Contract Manager;
- i) Keeping and updating all records relating to the Services Microsoft provides to County;
- j) Resolving any issues, problems or disputes which may arise which cannot be resolved by Microsoft's Contracts Specialist through Section 29 ("**DISPUTE RESOLUTION**"); and,

- k) Meeting and/or conferring with County's Program Manager on a regular basis as mutually agreed with respect to all work being performed on SOS tasks, Services, and Deliverables.

### 9.3 Microsoft's Support Engagement Manager – PSS.

Microsoft's Support Engagement Manager for PSS shall be Tulio Anzola. Microsoft shall notify County in writing of any proposed change in accordance with the provisions of Section 21 ("**REPLACEMENT OF MICROSOFT PERSONNEL**"). Microsoft's PSS Support Engagement Manager shall be responsible for the overall administration of this Master Agreement for Microsoft's Premier Support Services engagements with the County. Microsoft's PSS Support Engagement Manager shall carry out such responsibilities through the following activities:

- a) Assuring that Microsoft responds fully and completely to County's needs for PSS by developing the scope of and then drafting and finalizing the SOS to meet the County's needs as stated in the proposal County submits to Microsoft, obtaining County's acceptance of the Services Microsoft proposes to provide, and providing oversight of Microsoft's provision of those Services;
- b) Assuring that Microsoft Personnel perform their assigned work as required;
- c) Drafting, finalizing, delivering and processing all PSS Certificates of Acceptance;
- d) Taking such corrective action as is necessary when Deficiencies in Microsoft's Services are identified by either Microsoft or County;
- e) Representing Microsoft in the Dispute Resolution procedure as required in Section 29 ("**DISPUTE RESOLUTION**");
- f) Assuring that Microsoft fulfills its reporting responsibilities in every respect regarding project activity;
- g) Meeting and conferring on a regular basis with the County Project Directors assigned to the SOSs for which the Microsoft Contracts Specialist is responsible to review all work being performed on SOSs;
- h) Providing regular status reports to Microsoft's Program Manager;
- b) Keeping and updating all records relating to the PSS Microsoft provides to County;
- c) Resolving any issues, problems or disputes which may arise which cannot be resolved by Microsoft's Contracts Executive through Section 29 ("**DISPUTE RESOLUTION**"); and,
- d) Meeting and/or conferring with County's Program Manager on a regular basis as mutually agreed with respect to all work being performed on SOS tasks, Services, and Deliverables.

### 9.4 Microsoft's Contracts Executive – PSS.

Microsoft's PSS Contracts Executive shall be Margaret Gardiner. Microsoft shall notify County in writing of any proposed change in accordance with the provisions of Section 21

**("REPLACEMENT OF MICROSOFT PERSONNEL")**. Microsoft's Contracts Executive shall be responsible for drafting, finalizing, delivering and processing all PSS SOSs, including change orders. Microsoft's PSS Contracts Executive shall provide prompt responses to all issues and questions regarding PSS SOSs.

9.5 Microsoft's Contracts Specialist – MCS.

Microsoft's Contracts Executive shall be Noel Mamplata. Microsoft shall notify County in writing of any proposed change in accordance with the provisions of Section 21 **("REPLACEMENT OF MICROSOFT PERSONNEL")**. Microsoft's Contract Specialist shall be responsible for drafting, finalizing, delivering and processing all MCS SOSs, including change orders. Microsoft's MCS Contracts Executive shall provide prompt responses to all issues and questions regarding PSS SOSs.

**10. SUPPORTABILITY OF PRODUCTS**

10.1 Discontinuation of Support.

If Microsoft determines to discontinue support for a product being supported under a PSS SOS, Microsoft shall provide written notice of its intent to County's Program Director. Notwithstanding its notice to County, Microsoft shall still be obligated to support the product for the duration of the SOS or for six (6) months from the date of notice, whichever is longer.

10.2 Disposition of Product.

If Microsoft sells, transfers or otherwise disposes completely of the intellectual property rights of a product being supported under a PSS SOS, Microsoft shall give County prior written notice of such action to County's Program Manager and appropriate County Project Directors at the earliest time possible and, after good faith consultation with County concerning County's best interest shall, at no additional cost to County, either (i) arrange for the transferee to continue the support under a subcontract in which event Microsoft shall remain responsible for the Services of its Subcontractor; or (ii) continue support for the product for the duration of the SOS or for six (6) months, whichever is longer.

10.3 Notice to County Regarding County Environment.

If Microsoft believes that a Product being supported under an existing SOS cannot be effectively supported in County's environment, Microsoft shall provide written notice to County's Project Director of the SOS with a copy to County's Program Manager and shall work reasonably with personnel designated by County's Project Director for a period not to exceed thirty (30) days to suggest workarounds or other remedial steps which will

enable Microsoft to support the Product in County's environment. If, at the conclusion of this process, Microsoft reasonably determines that it cannot effectively support its Product in County's environment as it has been maintained and County declines to modify its environment, as recommended by Microsoft, to permit effective Support, Microsoft shall give County written notice of that determination and the factual basis supporting its position. If County does not modify its Environment to allow effective support for the Product within ten (10) working days after receipt of such notice, Microsoft shall have no obligation to provide further support for that Product provided, however, that Microsoft will continue to provide support for all County's other Products covered by the SOS.

#### 10.4 Unsupportable Product.

Where a Product can no longer be supported, notwithstanding the steps taken above, then, (i) for PSS, Microsoft shall confer with County to make such adjustments in the prepaid Services as may be required or appropriate, which may include reallocation of Services that County would have used for Products Microsoft will no longer support; and (ii) for MCS, Microsoft and County shall confer to determine what adjustment or change should be made in the Project Plan or price or both.

### 11. FEES AND RATES

#### 11.1 Fee Schedules –

PSS Fee Schedule is set forth in Exhibit A2; MCS Fee Schedule is set forth in Exhibit B2. Such fee schedules shall be utilized as further set forth in this Section 11.

##### 11.1.1 PSS Fee Schedule.

Commencing on the Effective Date of this Master Agreement, County shall pay fees to Microsoft in accordance with the rates set forth in Exhibit A2 ("**PSS Fee Schedule**"). On the first and each following anniversary of the Effective Date for the remaining term of this Master Agreement, the fees set forth in Exhibit A2 shall be increased by the percentage increase, if any, up to a maximum of three percent (3%), that Microsoft has applied to its published Public Sector Rates for the then-current Fiscal Year. Such fee increases shall be applied only to PSS SOSs executed after the applicable anniversary. The rates set forth in Exhibit A2 do not include license fees or other payments which may become due by County for Microsoft Products acquired by County separately from this Master Agreement. Should Microsoft's Public Sector hourly rates decrease, such lower hourly rates shall be immediately extended to County for all existing and subsequent SOSs. In no event shall out-of-pocket expenses be paid under any PSS SOS.



#### 11.1.2 MCS Fixed Price Determination Protocol.

In calculating the Fixed Price for each proposed MCS SOS, Microsoft shall provide, on County's request, project definition and scope, milestones, proposed payment points and additional information in the form of a project plan.

#### 11.1.3 MCS Fee Schedule.

Hourly rates set forth in Exhibit B2 ("**MCS Fee Schedule**") shall be used in calculating warranty claim investigative services charges to County if Microsoft investigates a claimed Deficiency in its performance of work under an MCS SOS, and no Deficiency exists. County will pay Microsoft for such investigation at Microsoft's hourly services rate as set forth in Exhibit B2. Each fiscal year commencing July 1, 2005, Microsoft shall increase the rate for its MCS Senior Consultant as set forth in Exhibit B2 for such warranty claim investigative services by an amount not to exceed five percent (5%) of the then-current charge or Microsoft's then-current Public Sector Published rate for Senior Consultant, whichever is less.

#### 11.2 Fees Fully Burdened.

Microsoft's fees shall include any sales taxes, duties, tariffs, levies or other governmental charges or expenses (including, without limitation, any value added taxes) to such fees are subject.

#### 11.3 Responsibility for Taxes.

Microsoft is responsible for taxes based upon Microsoft's personal property ownership and net income.

#### 11.4 Cost or Pricing Data.

Microsoft will not, under any circumstances, submit cost or pricing data.

### 12. INVOICES AND PAYMENT

#### 12.1 Invoicing – PSS.

In consideration for providing the tasks, Deliverables, Product Support, Services, or other work under a PSS SOS, Microsoft shall invoice the County annually, in advance. PSS invoices shall state the cost of the services the Department is ordering for the coming year which are specified in that Department's PSS SOS.

## 12.2 Invoicing – MCS.

In consideration for providing the tasks, Deliverables, Services or other work under an MCS SOS, Microsoft shall invoice County when it has completed the requirements of the payment milestones the parties have agreed to in the MCS SOS. Such invoices shall contain at least all information required by this Section 12. Microsoft may not invoice County for MCS until County has accepted those Services and issued Microsoft an Acceptance Certificate for those Services.

## 12.3 Submission of Invoices – PSS.

In order for Microsoft to invoice the County for the Department's PSS SOS payment, the SOS must have been reviewed and approved by the County Program Manager and Program Director and issued to Microsoft as is provided in Exhibit A3 ("**PSS Issuance Process**"). Microsoft shall submit its invoice for approval and payment to the PSS Project Director for each PSS SOS along with a copy of the approved PSS SOS. Microsoft shall also provide copies of these documents to the County's Program Manager. Each invoice shall contain, to the extent not already set forth in the SOS accompanying the invoice, the information required in Subsection 12.4.

## 12.4 Required Information on MCS Invoice and PSS Reporting Form.

For each MCS SOS, Microsoft, shall submit its invoice to County's SOS Project Director for approval and payment in the Form shown in Exhibit B8 ("**MCS Sample Invoice**") with a copy to County's Program Manager. For each PSS SOS, Microsoft shall, on a monthly basis, submit its PSS Reporting Form in the format shown in Exhibit A5 ("**PSS Reporting Form**") to the County's SOS Project Director with a copy to the Program Manager. Each invoice and Reporting Form shall include at least:

- a) The identifying County number of this Master Agreement;
- b) The identifying number or other designation of the SOS as mutually agreed to by County and Microsoft;
- c) A description of the Deliverable provided for which payment or decrement is claimed;
- d) The name(s) and titles of the individual(s) who performed the work;
- e) The Total Amount of the invoice or decrement;
- f) The amount of the Total Maximum Amount remaining on the SOS after subtracting previously billed and current charges;
- g) Any other relevant information requested by County.

12.5 Invoice / Decrement -Related Disputes.

If disputes arise between the parties regarding Invoices or Decrements and are not resolved within thirty (30) calendar days, the parties shall follow the procedures set forth in Section 29 ("**DISPUTE RESOLUTION**").

12.6 Retention of Data.

Time records, invoices, status reports, deliverables, and receipts shall be retained by Microsoft for at least five (5) years. When County requires access to such data, Microsoft shall make available, at no cost to County, within ten (10) business days in accordance with the procedures set forth in Section 47 ("**RECORDS AND AUDITS**").

12.7 Prohibition on Costs and Expenses.

County shall not, under any circumstances, pay Microsoft separately for any travel time, vacation, sick leave, per diem, out-of-pocket expenses, and/or any other costs and/or expenses, for any services rendered under this Master Agreement or any SOS issued hereunder.

12.8 Amounts Not Specified.

County shall not pay Microsoft for any amounts not specified in the SOS.

**13. COUNTY'S OBLIGATION FOR FUTURE FISCAL YEARS**

Notwithstanding anything to the contrary, County's obligations hereunder are payable only from funds specifically appropriated by County's Board of Supervisors; and County shall not be obligated for Microsoft's performance hereunder or by any provision of this Master Agreement during any of County's future Fiscal Years unless and until County's Board of Supervisors appropriates funds for this Master Agreement in County's Budget for each such future Fiscal Year. In the event that funds are not appropriated for this Master Agreement, then this Master Agreement shall terminate as of June 30 of the last Fiscal Year for which funds were appropriated. County will make a good faith effort to notify Microsoft in writing of any such non-appropriation of funds at the earliest possible date.

**14. BUDGET REDUCTIONS**

In the event that the Board of Supervisors adopts, in any fiscal year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County contracts, the County reserves the right to reduce its payment obligation correspondingly for that fiscal year and any subsequent fiscal year for services provided by Microsoft under this Master

Agreement. Microsoft's services shall be correspondingly reduced. Notice to Microsoft of such action by the Board of Supervisors shall be provided within thirty (30) calendar days of such action.

## **15. MICROSOFT OBLIGATIONS**

### **15.1 Performance.**

Pursuant to the provisions of this Master Agreement, Microsoft shall fully perform, complete and deliver on time all tasks, Deliverables, Services, or other work, as set forth in duly authorized PSS and MCS SOS. Unless otherwise agreed in writing, all work shall be performed at work sites specified by County.

### **15.2 Normal Working Hours.**

Unless otherwise agreed in writing, such work shall be provided during County's Normal Working Hours.

### **15.3 Monitoring and Control.**

Microsoft shall be responsible for monitoring and controlling the delivery of Services as specified in the SOS. Microsoft shall ensure that Microsoft Personnel do not work beyond an SOS expiration date. Microsoft shall ensure that the billable work on an SOS does not exceed the Total Maximum Amount as shown on the SOS. Further, Microsoft shall ensure that Microsoft Personnel who perform work on an SOS are specified in that SOS.

### **15.4 Gratuitous Efforts.**

If Microsoft provides any task, Deliverable, Service, or other work to County that utilizes other than approved Microsoft Personnel, and/or that goes beyond the applicable SOS expiration date, and/or that exceeds the total Maximum Amount as specified in the SOS, as originally written or modified, in accordance with Section 22 ("**CHANGES AND AMENDMENTS**"), or is other than as specified in an approved SOS, these shall be gratuitous efforts on the part of Microsoft for which Microsoft shall have no claim whatsoever against County.

### **15.5 Pro Bono Services.**

Microsoft may, from time to time, provide Pro Bono Services for County through this Master Agreement and an accompanying No-Cost Statement of Services which does not create a legal obligation for County to pay Microsoft for such services. It is Microsoft's intent, under this Master Agreement and accompanying No-Cost Statement of Services, to be in compliance with applicable laws and regulations. It is specifically understood that

all Pro Bono Services provided under this Master Agreement and accompanying No-Cost Statement of Services are for the sole benefit and use of County.

15.6 Local Office.

Microsoft shall maintain an office within Santa Monica. Microsoft's Engagement Manager shall be reachable through these local offices. In addition to the local office requirement, Microsoft shall have a local or toll-free telephone number to receive trouble calls and provide current status of SOS. The telephone shall be staffed by a Microsoft employee 24 hours per day, 7 days per week.

15.7 Working Environment.

Microsoft shall supply the working environment for its staff and its subcontractors performing the work, including all hardware, software, support services, and work space needed. Additionally, Microsoft shall provide a local working environment within Santa Monica for County staff to facilitate knowledge transfer and training of County staff, as deemed necessary by County's Program Director. For services to be performed on site at County facilities, County shall provide necessary work space as determined by the County's Project Director.

15.8 County Facilities.

For work at County facilities, Microsoft services shall be provided during Normal Working Hours at that facility unless County's needs dictate otherwise. County's Project Director shall advise and regularly update Microsoft Engagement Manager as to each facility's Normal Working Hours unless emergencies or specifically stated requirements dictate otherwise. Although Microsoft may require Microsoft Personnel to work more than forty (40) hours in a given week to complete SOS requirements, Microsoft may not bill County for "overtime" or extra payments. Access to County facilities required by Microsoft at other times shall require Microsoft to notify County's Project Director.

15.9 Quarterly Meetings.

Microsoft and County shall schedule and hold quarterly meetings between Microsoft's Contracts Manager, Microsoft's Consulting Engagement Manager, Microsoft's Support Engagement Manager, and other Microsoft Personnel, as necessary or desired, and County's Program Director, County's Program Manager, and other County management personnel, or as otherwise agreed upon by the parties, to review Microsoft's performance hereunder, the status of each then current SOS, to resolve any Service or billing problems, introduce new projects, and discuss any other issues, at no cost to County. Microsoft and County shall arrange for the meeting location, prepare the agenda for each meeting, and record and publish minutes and assignments to all the participants. Microsoft and County

shall also discuss upcoming events as described under Subsection 15.10, "**Presentation to County,**" and "**Participation by County in Programs,**" as referenced in Subsection 15.11.

15.10 Presentation to County.

Microsoft shall provide County and County Affiliates, at no cost to County, tailored presentations on current and future Microsoft technologies, as well as best practices and recommendations on how County can effectively and efficiently plan, deploy, and manage Microsoft Products and Services specifically in County's environments. Microsoft shall make appropriate, knowledgeable personnel available to participate in these meetings. Participants need not have an active SOS under this Master Agreement. All activities shall be approved by and coordinated with County's Program Manager.

15.11 Participation by County in Microsoft Programs.

Microsoft shall invite County and County Affiliates to participate in Beta Programs, Early Adopter Programs, Joint Development Programs, Rapid Deployment Programs and other opportunities that Microsoft Public Sector becomes aware of in order to allow County to provide customer feedback on and evaluation of future unreleased Microsoft products/versions, services, and technical documents. Participants need not have an active SOS under this Master Agreement. Invitations shall be sent to County's Program Manager.

**16. MICROSOFT'S REPRESENTATIONS, WARRANTIES AND COVENANTS**

16.1 PSS Warranty.

Microsoft warrants and represents that: (1) all work and Service Deliverables shall be performed in a professional and workmanlike manner, with all necessary care, skill and diligence, and in accordance with the applicable SOS and other requirements set forth herein; (2) all work and Service Deliverables shall conform to the requirements and specifications of the respective SOS throughout the term of this Master Agreement, including any and all extensions thereof; and, (3) all work and Service Deliverables shall be free of Deficiencies.

16.2 MCS Fixed Price Services Warranty.

Microsoft warrants that Fixed Price Service Deliverables shall meet the functional requirements and specifications set forth in the applicable SOS. For ninety (90) days following County's acceptance of any Fixed Price Services Deliverable, Microsoft warrants that it shall correct, at no charge to County, any Deficiency in same. For coverage under this warranty, County must notify Microsoft in writing of any such

Deficiency within the warranty period. If after attempting to correct the Deficiency, Microsoft is not able to do so, then Microsoft will refund all fees paid by County for the subject Fixed Price Services Deliverable. If Microsoft investigates the claimed Deficiency, and no Deficiency exists, then County will pay Microsoft for such investigation at Microsoft's hourly services rate as set forth in Exhibit B2 ("**MCS Fee Schedule**"). This warranty shall not apply to the extent that any Deficiency is caused by (i) unauthorized modifications to the Deliverable by the County or a third party, (ii) improper use, or (iii) causes external to the Deliverable and through no fault of Microsoft.

#### 16.3 Compliance with Applicable Laws.

Microsoft warrants and represents that its activities and work hereunder shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, guidelines, and directives, and all provisions required thereby to be included in this Master Agreement are hereby incorporated herein by reference. Microsoft shall have up to fifteen (15) days to correct any noncompliance with County rules, regulations, ordinances, guidelines, and directives following written notice of noncompliance from County or any regulating authority.

#### 16.4 MCS SOSs – Compatibility.

Microsoft represents, warrants, and agrees that all work shall function compatibly with and without detriment to County's existing computer and network systems, and that the work and existing systems, when taken together, shall deliver the functionality desired by County provided that this warranty shall apply only if such computer system and network systems are specifically defined and identified in the applicable SOS.

#### 16.5 No Legal Proceedings.

Microsoft represents, warrants, and agrees that there are no existing or threatened legal proceedings against Microsoft that would have an adverse affect upon its ability to perform its obligations under this Master Agreement or its financial condition or operations and shall notify County promptly in writing of any change in this circumstance.

#### 16.6 Disabling Devices.

Microsoft represents, warrants, and agrees that Microsoft will not cause any interruption of the operations of, or vulnerability to, the work, or County's computer and network systems through any device, method or means including, without limitation, the use of any "virus," "worm," "lockup," "time bomb," "key lock," device or program, or disabling or defective code, which has the potential or capability of causing any interruption of the operations of, or accessibility to, the work, or County's computer and network systems or which could alter, destroy, or inhibit the use of the work or County's computer and network systems, or

the data contained therein (collectively referred to for purposes of this Subsection 16.6 as “Disabling Device(s)”) which could block access to or prevent the use of the work or County’s computer and network systems.

16.7 Accuracy.

Microsoft represents and warrants that the work will accurately determine chronological dates and accurately perform all calculations, data manipulations, sorting, and transmission of data regardless of whether the data represents or references different centuries.

16.8 No Limitation.

It is understood and agreed by the parties that Microsoft’s representations and warranties are set forth throughout this Master Agreement and are not confined to this Section 16.

16.9 Disclaimer.

EXCEPT FOR THE EXPRESS WARRANTIES AND REPRESENTATIONS PROVIDED IN THIS MASTER AGREEMENT, ANY SOS EXECUTED HEREUNDER, AND ANY UNDERLYING PRODUCT PURCHASE AGREEMENTS AND/OR PURCHASE ORDERS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MICROSOFT DISCLAIMS AND EXCLUDES ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS, IMPLIED OR STATUTORY INCLUDING, BUT NOT LIMITED TO, REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF TITLE, NON-INFRINGEMENT, SATISFACTORY CONDITION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY SERVICES, SERVICE DELIVERABLES, FIXES, PRODUCTS, OR ANY OTHER MATERIALS OR INFORMATION.

**17. INDEPENDENT CONTRACTOR STATUS**

17.1 No Agency or Partnership.

This Master Agreement is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between County and Microsoft. The employees and agents of one party are not the employees or agents of the other party for any purpose whatsoever. Microsoft shall function as, and in all respects is, an independent contractor.



**17.2 Responsibility for Compensation.**

Microsoft shall be responsible for providing all compensation and benefits to, or on behalf of, all persons performing work on its behalf pursuant to this Master Agreement. County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, federal, state, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of Microsoft.

**17.3 Workers' Compensation Liability.**

Microsoft understands and agrees that all persons performing work pursuant to this Master Agreement are, for purposes of workers' compensation liability, solely employees of Microsoft and not employees of County. Microsoft shall be solely liable and responsible for furnishing any and all workers' compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of Microsoft hereunder.

**17.4 Compliance with Rules and Regulation of Premises.**

The employees and agents of Microsoft, shall, while on the premises of County, comply with all rules and regulations of the premises including, but not limited to, security requirements.

**18. BACKGROUND AND SECURITY INVESTIGATIONS**

**18.1 Background Investigations.**

At the discretion and request of County, all Microsoft Personnel performing work under any SOS may be required to undergo and pass, to the satisfaction of County, background and security investigation(s) as a condition of beginning and continuing work under such SOS. County shall receive updates from the investigating agency in the event that the status of the Microsoft employee changes. A Microsoft employee shall have the right to refuse to submit to the aforementioned background and security investigation. In such event, the Microsoft employee shall be withdrawn and replaced by Microsoft. County shall not transmit to Microsoft any information pertaining to the results of such background security investigation(s) except whether the subject of the investigation has passed or failed.

**18.2 Access to Court Facilities.**

Notwithstanding the foregoing, all Microsoft Personnel requiring access to court facilities shall undergo and pass such background and security investigation(s) prior to obtaining such access.

**18.3 Expenses for Investigations.**

The investigation(s) shall be at Microsoft's expense and shall be conducted by an investigation organization licensed by the State of California. Such expense shall be invoiced to Microsoft as set forth in the applicable SOS. The investigation(s) may consist of a background and fingerprint check with the Los Angeles County Sheriff's Department, the California Department of Justice, the Federal Bureau of Investigation, and the National Crime Information Center. Microsoft shall instruct and hereby authorizes the investigation organization to submit the results of the investigation(s) directly to County.

**18.4 Standards.**

The standards used by County in making a determination of "pass" or "does not pass" will generally be the standards used by County for placement of County employees in sensitive positions. However, County reserves the right to use higher standards for Microsoft Personnel for individual projects, or portions thereof, and/or for access to specific locations.

**18.5 Denial or Termination of Access to Facilities.**

A court and/or County organization may immediately deny or terminate court and/or County facility access to Microsoft Personnel who do not pass such investigation(s) to the satisfaction of the court and/or County organization, or whose background or conduct is incompatible with court and/or County facility access, as determined in the sole discretion of the court and/or County organization. Any disqualification of any Microsoft Personnel pursuant to this Section 18 shall not relieve Microsoft of its obligation(s) to complete all requirements of this Master Agreement including, but not limited to, those of any and all SOSs.

**19. SUBCONTRACTING**

**19.1 Prior Approval Required.**

No performance of this Master Agreement, or any portion thereof, shall be subcontracted by Microsoft without the prior written approval of County, through its Board of Supervisors which shall specifically include the approval of the subcontractor Microsoft proposes to use for the work in question as provided in this Section 19. Any attempt by Microsoft to subcontract any performance under this Master Agreement without the prior written consent of County shall be null and void and shall be deemed a material breach of this Master Agreement, upon which the County may immediately terminate this Master Agreement.

## 19.2 Request for Approval.

If Microsoft desires to subcontract any portion of its performance under this Master Agreement, Microsoft shall provide to County, in writing, a request for written approval to enter into the particular subcontract, which request shall not be unreasonably withheld and which shall include:

- a) The reason(s) for the particular subcontract;
- b) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected;
- c) A detailed description of the work to be performed by the proposed subcontractor;
- d) A draft copy of the proposed subcontract, which shall contain, at a minimum, all relevant County-required provisions;
- e) Unless otherwise determined unnecessary by County, copies of Certificates of Insurance and Performance Security from the proposed subcontractor which establish that the subcontractor maintains all the programs of insurance required by Section 27 (“**INDEMNIFICATION AND INSURANCE**”); and,
- f) Other pertinent information and/or certifications requested by County.

## 19.3 Responsibility for Subcontractor Performance and Payment.

Notwithstanding County’s consent to any subcontracting, Microsoft shall remain fully responsible for any and all performance required of it under this Master Agreement, including those which Microsoft has determined to subcontract including, but not limited to, the obligation to properly supervise, coordinate and perform all work required under this Master Agreement. Microsoft shall also be responsible for any and all payments and other compensation to all subcontractors.

## 19.4 Non-Waiver.

County’s consent to any subcontracting shall not waive County’s right to prior and continuing approval of essential personnel, including subcontractor’s employees, providing services under this Master Agreement. Microsoft shall notify its subcontractors of this County’s rights prior to subcontractors commencing performance under this Master Agreement.

## 19.5 Responsibility for Payment.

Notwithstanding County’s consent to any subcontracting, Microsoft shall be solely liable and responsible for any and all payments and other compensation to all subcontractors, and their officers, employees, agents, and successors in interest, for any services performed by subcontractors under this Master Agreement.

## **20. PROHIBITION AGAINST DELEGATION AND ASSIGNMENT**

### **20.1 County's Consent Required.**

Microsoft shall not assign its rights or delegate its duties under this Master Agreement, either wholly or in part, without County's prior written consent through its Board of Supervisors. Any billings to County by any delegate or assignee on any claim under this Master Agreement absent such County consent shall not be paid by County until such consent is obtained. Any other assignment or delegation shall be null and void. Any payments by County to any delegate or assignee on any claim under this Master Agreement shall be deductible, at County's sole discretion, against the claims which Microsoft would have against County hereunder.

### **20.2 Assignment or Delegation Without County's Consent.**

If any assumption, assignment, delegation, or takeover of any of Microsoft's duties, responsibilities, or obligation occurs, or if any performance of same by any entity other than Microsoft, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism occurs with or without consideration for any reason whatsoever without County's prior written consent, County's Program Director may, in his/her sole discretion, issue a notice of termination of this Master Agreement in accordance with the termination provisions stated in this Master Agreement, including Section 33 ("**TERMINATION FOR DEFAULT**"), and Section 36 ("**TERMINATION FOR CONVENIENCE**"). Any termination shall be effected through action of the County's Board of Supervisors

## **21. REPLACEMENT OF MICROSOFT PERSONNEL**

### **21.1 Notice of Intention to Reassign Personnel.**

If Microsoft wishes, or is obliged, to reassign any personnel identified in this Master Agreement or in any SOS issued hereunder, Microsoft shall furnish County's Program Manager with adequate notice of such intention at the earliest possible time, and shall not effect any discretionary reassignment without the advance approval of County's Program Manager. County's approval shall not be unreasonably withheld. Microsoft will use its best efforts to replace reassigned or terminated employees with at least equally qualified personnel as soon as reasonably possible after such reassignment or termination. Microsoft's discretionary replacements shall be at no cost to County.

### **21.2 Provision of Resume; Interview.**

Microsoft shall work with County on a mutually agreeable transition plan so as to provide an acceptable replacement and ensure service continuity. Microsoft agrees that all

Microsoft Personnel to be assigned to perform under this Master Agreement must have successfully performed similar work. In the event that, as a result of the action or inaction of Microsoft Personnel, additional work is required to perform any SOS, Microsoft shall perform all such work at no additional cost to County. In addition, Microsoft represents and warrants that it shall, to the maximum extent possible, take all necessary steps to assure continuity over time of the membership of Microsoft Personnel. Microsoft shall promptly fill any vacancy with personnel having qualifications at least equivalent to those being replaced.

21.3 Background Investigations.

County's approval of discretionary reassignments may be contingent upon Microsoft's proposed replacement passing a County security check or background investigation due to the sensitive nature of certain County areas or activities, as set forth in Section 18 ("**BACKGROUND AND SECURITY INVESTIGATIONS**").

**22. CHANGES AND AMENDMENTS**

22.1 Written Amendment Required.

Except as otherwise expressly provided in this Section 22, changes which affect the scope of work, the term, payments, any condition, or any rights or obligations of this Master Agreement, shall require a written amendment to this Master Agreement which must be approved by County's Board of Supervisors and Microsoft.

22.2 Changes in Terms Required by Board of Supervisors.

County's Board of Supervisors may require the addition and/or change of certain terms and conditions in this Master Agreement. To implement such changes, County's Program Director is hereby expressly authorized to execute amendments to incorporate such mutually agreeable contract provisions which shall only be effective upon Microsoft's countersignature of such amendment.

22.3 Exercise of Option to Extend Term and Change Forms and Exhibits.

County's Program Director, or Acting Director, is hereby expressly authorized to exercise County's options to extend the term of this Master Agreement as provided in Section 4 ("**TERM**"), in any increment, and, except for prices and fees, to change any forms or Exhibits which are part of this Master Agreement. Any such extension, or change in forms or Exhibits shall be in writing and signed by County's Program Director or Acting Director and Microsoft's authorized officials.

#### 22.4 SOS Change Notices.

For any change which affects the scope of work, period of performance, payments, or any other aspect of an SOS, without affecting any term or condition of this Master Agreement, a Change Notice shall be prepared and executed by County's Program Director or Acting Director and Microsoft's Contracts Manager, using the form set out in Exhibits A9 for PSS or B9 for MCS.

#### 22.5 Extended Master Agreement Expiration Date.

Notwithstanding any other provisions of this Section 22, for any SOS issued prior to this Master Agreement's expiration date, with an expiration date subsequent to the Master Agreement's termination date, then the terms and conditions of this Master Agreement shall survive in full force and effect as to such particular SOS up to the SOS expiration date; provided, however, that such extended Master Agreement expiration date shall apply to such SOS only, and shall not extend such date for any other purpose whatsoever, including issuing a new or amended SOS or extending any other SOS.

### 23. **CONFIDENTIALITY**

Except as disclosure may be required by any applicable law including, but not limited to, the California Public Records Act, the parties shall maintain the following information as confidential:

#### 23.1 Confidential Proprietary Information.

Confidential proprietary information means information marked or otherwise identified in writing by a party as proprietary or confidential or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. It includes, but is not limited to, non-public information regarding either party's products, features, marketing and promotions. Confidential information does not include information which: (i) the recipient developed independently; (ii) the recipient knew before receiving it from the other party; or (iii) is, or subsequently becomes publicly available, or is received from another source, in both cases other than by a breach of an obligation of confidentiality under this Master Agreement.

##### 23.1.1 Five-Year Term.

Except as expressly provided for in this Section 23, for a period of five (5) years after initial disclosure, neither party will use the other's confidential proprietary information without the other's written consent except in furtherance of this business relationship or disclose the other's confidential information except (i) to obtain advice from legal or financial consultants, or (ii) if compelled by law, in which case the party compelled to

make the disclosure will use its best efforts to give the other party notice of the requirement so that the disclosure can be contested.

#### 23.1.2 Reasonable Precautions.

County and Microsoft shall take reasonable precautions to safeguard each other's confidential proprietary information. Such precautions will be at least as great as those each party takes to protect its own confidential proprietary information. Each party may disclose the other's confidential proprietary information to its employees only on a need-to-know basis. When confidential information is no longer necessary to perform any obligation under any SOS, the receiving party will, at the other's request, either return it or destroy it.

#### 23.1.3 Protection of Security of Confidential Information.

In accordance with all applicable federal, state, and local laws, regulations, ordinances, and directives relating to confidentiality, Microsoft shall protect the security of and keep confidential all records, materials, documents, data, and/or other information received, obtained, and/or produced under the provisions of this Master Agreement. Microsoft shall use whatever security measures are necessary to protect all such records, materials, documents, data and/or other information from loss, damage, and/or unauthorized dissemination by any cause including, but not limited to, fire and theft.

#### 23.1.4 Non-disclosure of Information.

Microsoft shall not disclose to any person or entity any information identifying, characterizing, or relating to any trait, feature, function, risk, threat, vulnerability, weakness, or problem regarding any data or system security in County's computer system(s), nor any safeguard, counter-measure, contingency plan, policy, or procedure for any data or system security contemplated or implemented by County, without County's prior written consent as authorized by County's Program Director.

#### 23.1.5 Limitation on Access to County Records.

Microsoft shall ensure that only those Microsoft Personnel, including subcontractor employees, required to perform the work shall have access to County records, materials, documents, data, and/or other information. All records, materials, documents, data, and/or other information of any kind obtained from County and all reports developed by Microsoft and/or its subcontractor(s) under this Master Agreement are confidential to and are solely the property of County.

#### 23.1.6 No Reproduction of County Materials Without Written Consent.

Microsoft shall ensure that said records, materials, documents, data, and/or other information of any kind obtained from County shall not be copied or reproduced by any method without the express written approval of County's Program Director. The provisions of this Section 23 shall survive the expiration of other termination of this Master Agreement.

#### 23.1.7 Free Independent Development of Products.

Each party is free to develop its respective products independently without the use of the other's confidential proprietary information. Neither County nor Microsoft is obligated to restrict the future work assignments of people who have had access to confidential information. In addition, County, Microsoft and the people who have had access to confidential information are free to use the information that the people retain in their unaided memories related to information technology, including ideas, concepts, know-how or techniques, so long as such use does not disclose confidential proprietary information of the other party in violation of this Section 23. This use will not grant either party any rights under the other's copyrights or patents and does not require payment of royalties or separate license.

#### 23.1.8 Suggestions, Comments and Feedback.

Either party may provide suggestions, comments or other Feedback to the other with respect to the other's confidential proprietary information. Feedback is voluntary and the party receiving Feedback is not required to hold it in confidence, as long as Feedback does not constitute confidential proprietary information. The party receiving Feedback will not disclose the source of Feedback without the providing party's consent. Feedback may be used for any purpose without obligation of any kind, as long as Feedback does not constitute any confidential proprietary information as defined in Subsection 23.1.

#### 23.1.9 Notification Upon Discovery of Unauthorized Use.

Each party will immediately notify the other upon discovery of any unauthorized use or disclosure of the other party's confidential proprietary information and will cooperate reasonably to help the other regain possession of the confidential proprietary information and prevent further unauthorized use or disclosure.

#### 23.1.10 Knowledge Base.

Microsoft may use any technical information it derives from providing services related to Microsoft's products for problem resolution, troubleshooting, and product functionality enhancements and fixes for Microsoft's knowledge base. Microsoft agrees not to identify



County or disclose any County confidential information in any item in the knowledge base.

#### 23.2 Confidential Statutory Information.

Confidential Statutory Information means County records which are confidential pursuant to any and all federal, state, or local laws, regulations and directives relating to confidentiality. Microsoft shall inform its employees and agents providing services hereunder of the confidentiality of such records, as well as the confidentiality provisions of this Master Agreement. In lieu of Microsoft's providing to County an executed Microsoft Personnel Acknowledgment of Confidentiality in the form shown in Exhibit C for each of its employees and agents performing services under this Master Agreement, Microsoft may provide such Acknowledgment on behalf of its personnel, and in that event Microsoft shall indemnify, defend, and hold harmless the County from any and all liability arising from any unauthorized disclosure of Confidential Statutory Information by any Microsoft employee, agent, or subcontractor, whether within the course and scope of employment or otherwise, and with or without cause and Microsoft shall take all reasonable steps to prevent such personnel from continuing to disclose such Confidential Statutory Information.

#### 23.3 HIPAA Requirements.

The parties recognize that certain services to be provided under this Master Agreement are subject to the requirements of the Health Information Portability and Accountability Act of 1996 [HIPAA] and that Microsoft shall be a Business Associate of a covered entity. Accordingly, the parties shall be obligated and governed by the provisions of Exhibit E with respect to any SOS issued hereunder in which Microsoft would be a Business Associate as defined in HIPAA and regulations issued thereunder.

### 24. DISCLOSURE OF INFORMATION

Microsoft shall not disclose any terms or conditions of or any circumstances or events which occur during the performance of this Master Agreement to any person or entity except as may be otherwise provided herein or required by law. In the event Microsoft receives any court or administrative agency order, service of process, or request by any person or entity (other than Microsoft's professionals) for disclosure of any such details, Microsoft shall immediately notify County's Project Director. Thereafter, Microsoft shall comply with such order, process or request only to the extent required by applicable law. Notwithstanding the preceding sentence, to the extent permitted by law, Microsoft shall delay such compliance and fully cooperate with County to obtain relief from such obligations to disclose until County shall have been given a reasonable opportunity to obtain such relief. However, in recognizing Microsoft's need to identify its services and

related clients to sustain itself, County shall not inhibit Microsoft from publishing its role under this Master Agreement within the following conditions:

- (a) Microsoft shall develop all publicity material in a professional manner.
- (b) During the term of this Master Agreement, Microsoft shall not publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of County without the prior written consent of County's Project Director. County shall not unreasonably withhold or delay such written consent.
- (c) Microsoft may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Master Agreement with County, provided that the requirements of this Paragraph 24 shall apply.

## **25. OWNERSHIP AND LICENSE**

### **25.1 Pre-existing Work.**

Pre-existing Work shall remain the sole property of the party providing the Pre-existing Work. During the performance of the services for any SOS, each party grants to the other party (and Microsoft's contractors and County's contractors, as necessary) a temporary, non-exclusive license to use, reproduce and modify any of its Pre-existing Work provided to the other party solely for the performance of such services.

### **25.2 License Grant.**

Microsoft hereby grants County a non-exclusive, perpetual, fully-paid, license to use, reproduce and modify Microsoft's Pre-existing Work, Code Developments and Non-code Developments in the form delivered to County as part of the Service Deliverables, and to distribute the object code version of any of the foregoing and County's derivatives thereof, to end users as an integrated part of County's software, but not as a stand alone product. Such license is conditioned upon County's compliance with the terms of this Master Agreement and the perpetual license applies solely to Microsoft's Pre-existing work, Code Developments and Non-code Developments that Microsoft leaves to County at the conclusion of Microsoft's performance of the Services.

### **25.3 Restrictions On Use.**

County shall not rent, lease, lend or host Service Deliverables or fixes, except as otherwise provided in an SOS, reverse engineer, decompile or disassemble fixes or Service Deliverables, except to the extent expressly permitted by applicable law despite this limitation; or transfer licenses to, or sub-license fixes or Service Deliverables to any

government entity or quasi governmental entity, except for County Affiliates as otherwise authorized by this Master Agreement or an applicable SOS.

#### 25.4 Open Source License Restrictions.

Certain third party license terms may require that computer code be (i) disclosed in source code form to third parties; (ii) licensed to third parties for the purpose of making derivative works; or (iii) redistributable to third parties at no charge (collectively, "unacceptable license terms"). The license rights that Microsoft has granted herein to County to any computer code (or any intellectual property associated therewith) shall not include any license, right, power or authority for County to knowingly incorporate, modify, combine and/or distribute that computer code with any other computer code in a manner which would subject Microsoft's computer code to such referenced unacceptable license terms. Furthermore, each party warrants that it will not knowingly provide or give to the other party computer code that is governed by unacceptable license terms.

#### 25.5 No Product Provided.

No Product shall be provided through or licensed under this Master Agreement.

### 26. **LIMITATION OF LIABILITY**

#### 26.1 Limitation on Liability.

Microsoft's total liability to County in connection with each SOS issued under this Master Agreement for direct damages, regardless of the theory of liability, shall not exceed three (3) times the total amount of the applicable SOS giving rise to the claims, or four hundred thousand dollars (\$400,000), whichever is greater. In the event that Microsoft provides services under a Pro Bono SOS, however, then its liability to the County under this Section 26 shall not exceed five thousand dollars (\$5,000) for each such SOS.

#### 26.2 Exclusions to Limitation on Liability.

Notwithstanding any provision of this Master Agreement to the contrary, whether expressly or by implication, the Limitation of Liability set forth in Subsection 26.1 does not apply to the following, which are hereby expressly excluded from and not affected by such limitation:

- (a) Microsoft's obligations under Section 27 ("**INDEMNIFICATION AND INSURANCE**");
- (b) Microsoft's liability to County for damages caused by gross negligence or willful misconduct to the extent caused by Microsoft and/or its agent(s);
- (c) Microsoft's obligations under Section 23 ("**CONFIDENTIALITY**");

- (d) Microsoft's various obligations of indemnification throughout this Master Agreement; and,
- (e) The parties' obligations to each other arising from a breach of the other party's intellectual property rights.

**26.3 Liability for Indirect, Consequential or Incidental Damages.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER MICROSOFT NOR THE COUNTY SHALL BE LIABLE TO THE OTHER FOR ANY: (i) INDIRECT DAMAGES, (ii) CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR BUSINESS INTERRUPTION OR LOSS OF BUSINESS INFORMATION), (iii) SPECIAL, OR (iv) INCIDENTAL DAMAGES, OR (v) DAMAGES FOR LOSS OF PROFITS OR REVENUES ARISING IN CONNECTION WITH THIS MASTER AGREEMENT, ANY SOS, SERVICES, SERVICE DELIVERABLES, FIXES, PRODUCTS, OR ANY OTHER MATERIALS OR INFORMATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. THIS EXCLUSION OF LIABILITY DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ANY CONFIDENTIALITY OR INTELLECTUAL PROPERTY OBLIGATIONS

**27. INDEMNIFICATION AND INSURANCE**

a. Microsoft agrees to indemnify, defend and hold harmless County and County special districts and their elected and appointed officers, employees and agents from and against any third party claims for damages for bodily injury (including death) and damage to real property or tangible personal property for which it is legally liable to that third party and pay all cost, damages and attorney fees that a court finally awards or that are in a settlement approved by Microsoft. Upon being served with any action or claim, County shall promptly notify Microsoft in writing of same. County shall permit Microsoft to control the defense of any action or claim to the extent permitted by law, and shall cooperate with Microsoft in the defense.

b. Microsoft shall indemnify, defend, and hold harmless County against any and all liability arising from any claims made by an unaffiliated third party that any product, fix, or Service Deliverables infringes its patent, copyright or trademark or misappropriates its trade secret and will pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents). County shall endeavor to notify Microsoft promptly in writing of the claim and shall give Microsoft sole control over its defense or settlement subject to County's approval of Microsoft's counsel, which approval shall not be unreasonably withheld. County agrees to provide Microsoft with reasonable assistance in defending the claim, and Microsoft will reimburse County for expenses that County incurs in providing that assistance.

c. Microsoft's obligations will not apply to the extent that liability is based on: (i) specifications, code, or materials County provides; (ii) County's running of the product, fix, or Service Deliverables after Microsoft notifies County to discontinue running because of such a claim and after the County has a reasonable period of time to decess; (iii) County's combining or altering the product, fix or Service Deliverables with a non-Microsoft product, data or business process unless Microsoft required that County use that non-Microsoft product, data or business process; (iv) damages attributable to the value of the use of a non-Microsoft product, data or business process unless Microsoft required that County use that product, data or business process; (v) County's altering the product, fix or Service Deliverables other than at the direction of Microsoft; (vi) use of, or access to, products, fixes or Service Deliverables by any person or entity other than County or County's affiliates as permitted by Microsoft; (vii) County's use of Microsoft's trademark(s) without express written consent to do so; or (viii) for any trade secret claim, County's acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than Microsoft or Microsoft's affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret.

d. If Microsoft receives information concerning an infringement claim related to a product, fix, or service deliverable, Microsoft may, at its expense and without obligation to do so, either (i) procure for County the right to continue to run the allegedly infringing Service Deliverable, or (ii) modify the Service Deliverable or replace it with a functional equivalent to make it non-infringing, in which case County will stop running the allegedly infringing product, fix, or Service Deliverable immediately thereafter. If, as a result of an infringement claim, County's use of a product, fix, or service deliverable is enjoined by a court of competent jurisdiction, Microsoft will, at Microsoft's option, either procure the right to continue its use, replace it with a functional equivalent, modify it to make it non-infringing, or refund the amount paid and terminate the license for and, as applicable to certain Service Deliverables, County's ownership rights in, the infringing service deliverable. The foregoing is not intended to be the County's sole and exclusive remedy.

e. Insurance Programs.

- i. Without limiting Microsoft's indemnification of County during the term of this Master Agreement, Microsoft shall provide and maintain, and shall require all of its subcontractors to maintain, the following programs of insurance specified in this Master Agreement. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by County, and such coverage shall be provided and maintained at Microsoft's own expense.

A. Insurance Coverage Requirements.

(1) General Liability Insurance

Written on ISO policy from CG 00 01 or its equivalent with limits of not less than the following:

|                                 |             |
|---------------------------------|-------------|
| General Aggregate               | \$2 million |
| Products/Completed Operations   |             |
| Aggregate                       | \$1 million |
| Personal and Advertising Injury | \$1 million |
| Each Occurrence                 | \$1 million |

(2) Automobile Liability Insurance

Written on ISO policy form CA 00 01 or its equivalent with a limit of liability of not less than one million dollars (\$1 million) for each accident. Such insurance shall include coverage for all "owned," "hired," and "non-owned" vehicles, or coverage for "any auto."

(3) Workers' Compensation and Employers' Liability Insurance

Providing workers' compensation benefits, as required by the Labor Code of the State of California or by any other state, and for which Microsoft is responsible. In all cases, the above insurance shall also include Employers' Liability coverage with limits of not less than the following:

|                         |             |
|-------------------------|-------------|
| Each Accident           | \$1 million |
| Disease - Policy Limit  | \$1 million |
| Disease - Each Employee | \$1 million |

(4) Professional Liability

Insurance covering liability arising from any error, omission, negligent or wrongful act of Microsoft, its officers or employees with limits of not less than one million dollars (\$1 million) per occurrence and three million dollars (\$3 million) aggregate. The coverage also shall provide an extended two (2) year reporting period commencing upon termination, cancellation, or expiration of this Master Agreement.

B. Evidence of Insurance.

Certificate(s) or other evidence of coverage satisfactory to County shall be delivered to: MSA Program Manager, Chief Information Office, 500 West Temple Street, Suite 493, Los Angeles, CA 90012, prior to commencing services under this Master Agreement. Such certificates or other evidence shall, at a minimum:

- (1) Specifically identify this Master Agreement;
- (2) Clearly evidence all coverage's required in this Master Agreement;
- (3) Contain the express condition that County is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance; and,
- (4) Include copies of the additional insured endorsement to the commercial general liability policy, adding the County of Los Angeles, its Special Districts, its officials, officers and employees as insured for all activities arising from this Master Agreement.

C. Insurer Financial Ratings.

Insurance is to be provided by an insurance company acceptable to County with an A. M. Best Rating of not less than A:VII, unless otherwise approved by County.

D. Notification of Incidents, Claims or Suits.

Microsoft shall report to County:

- (1) Any accident or incident relating to services performed under this Master Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against Microsoft and/or County. Such report shall be made in writing within twenty-four (24) hours of occurrence.
- (2) Any third-party claim or lawsuit filed against Microsoft arising from or related to services performed by Microsoft under this Master Agreement.
- (3) Any injury to a Microsoft employee which occurs on County property. This report shall be submitted on a "County Non-employee Injury Report" to County's Project Director for the applicable SOS.
- (4) Any loss, disappearance, destruction, misuse or theft of any kind whatsoever of County property, monies or securities entrusted to Microsoft under the terms of this Master Agreement.

E. Insurance Coverage Requirements for Subcontractors.

All subcontractors performing work under this Master Agreement shall be subject to the insurance requirements of this Master Agreement and shall be maintained at no cost to County. Microsoft shall ensure that its subcontractor performing services under this Master Agreement meet the insurance requirements of this Master Agreement by either:

- (1) Microsoft providing evidence of insurance covering the activities of subcontractors, or
- (2) Microsoft providing evidence submitted by subcontractors evidencing that subcontractors maintain the required insurance coverage. County retains the right to obtain copies of evidence of the subcontractors' insurance coverage at any time.

F. Compensation for County Costs.

In the event that Microsoft fails to comply with any of the indemnification or insurance requirements of this Master Agreement, and such failure to comply results in any loss or costs to County, Microsoft shall pay full compensation to County for any and all loss and/or costs incurred by County.

G. Failure to Maintain Coverage.

Failure by Microsoft to maintain the required insurance, or to provide evidence of insurance coverage acceptable to County, shall constitute a material breach of the Master Agreement, upon which County may immediately terminate or suspend this Master Agreement in accordance with Section 33 ("**TERMINATION FOR DEFAULT**"), and pursue any and/or all rights and/or remedies.

## **28. WORK APPROVAL TESTING AND ACCEPTANCE**

### **28.1 Acceptance Criteria.**

As more particularly set forth in Subsection 28.3 and Subsection 28.5, respectively, Microsoft will consult with County's Project Director to establish a mutually agreed to Acceptance Test Plan and Schedule, a mutually agreed to process and procedure by which the parties will verify that the Service Deliverables meet the Acceptance Criteria, the agreed upon objective standards by which the parties will verify that the Service Deliverables meet the functional specifications set forth in the SOS. Conformity to the Acceptance Criteria, as judged by County's Project Director in his sole discretion, shall determine whether County will accept or reject the Service Deliverables.

### **28.2 Process for Acceptance Test.**

County's Project Director shall appoint personnel who shall attend, participate in, and verify the results of the Acceptance Testing. Microsoft shall demonstrate that all work being tested either meets or exceeds the Acceptance Criteria. Testing shall include or be performed in the presence of County representatives.



### 28.3 PSS Acceptance Tests.

The parties shall, in each instance, mutually agree upon the Acceptance Criteria and testing which will apply to the Services Microsoft delivers when County's department orders Services from the PSS SOS it has in place with Microsoft. When the department is satisfied that the Services at least meet the Acceptance Criteria the parties previously agreed upon, County's Project Director shall issue Microsoft a PSS Acceptance Certificate (Exhibit A4), copy County's Program Manager, and close the matter. Microsoft shall not under any circumstances decrement a Department's PSS SOS for any Service Microsoft has provided until the Department has accepted those services and issued Microsoft a Certificate of Acceptance in the form shown in Exhibit A4.

### 28.4 PSS Reporting Form – Acceptance of Decrement.

For each PSS SOS, Microsoft, on a monthly basis shall submit to the County's Program Manager and the SOS Project Director a copy of its PSS Reporting form as shown in Exhibit A5. Along with cumulative information that is required by Exhibit A3 ("**PSS Issuance Process**"), this report shall separately state all decrements for which Microsoft is charging the County for the reporting period. The County shall use the report to verify that all decrements for which Microsoft has charged the Department for the reporting period are supported by an Acceptance Certificate. Where Microsoft has not provided an Acceptance Certificate for a decrement and the County Project Director is not otherwise able to verify that the decrement is supported by an Acceptance certificate, the County shall challenge the decrement and Microsoft shall reverse the decrement until the matter is resolved through Section 29 (**DISPUTE RESOLUTION**).

### 28.5 MCS Acceptance Tests.

For MCS, the parties must establish the Acceptance Criteria and any Acceptance Testing that County requires before the SOS is approved and executed by County's Project Director and issued to Microsoft. When Microsoft has completed Services delivery or reached a payment milestone the parties have established, Microsoft shall demonstrate that the Services meet the Acceptance Criteria. County's Project Director shall appoint personnel who shall attend, participate in and verify the results of such Acceptance Testing. County's Project Director shall review the test results and determine whether the Deliverable meets the Acceptance Criteria. When the County's Project Director has determined that the Deliverable meets the Acceptance Criteria, he/she shall issue an Acceptance Certificate (Exhibit B4) for that Deliverable and provide County's Program Manager with a copy of the Certificate. When County's Project Director issues the Acceptance Certificate, Microsoft shall then be authorized to invoice County for the work covered by the Acceptance Certificate.

#### 28.6 Notice of Deficiencies.

If County's Project Director makes a good faith determination that Microsoft's work as a whole, or a component thereof, has failed to successfully complete an Acceptance Test, he/she shall promptly notify Microsoft's Engagement Manager in writing of the Deficiencies identified at that time, specifying with as much detail as possible, the manner in which the work failed to pass the applicable Acceptance Test.

#### 28.7 Correction of Deficiencies.

Upon receipt of Notice from County, Microsoft shall promptly commence all reasonable efforts to correct the Deficiencies County identifies. Microsoft shall notify County's Project Director when it has corrected the Deficiencies and the Acceptance Test shall resume. For each PSS SOS, Microsoft shall, at no additional cost to County, be required to continue its efforts to correct any remaining Deficiencies until Microsoft succeeds. For each MCS SOS, if, after the applicable test has been completed for a second time, County's Project Director makes a good faith determination based upon the Acceptance Criteria that the Deficiencies in the Services Deliverables have not been corrected, County may deem Microsoft to be in default on that SOS. County may, at its option, require Microsoft to continue to try to correct the Deficiency in the MCS Service Deliverable as is provided in this Section 28 or County may terminate the SOS under the provisions of Section 33 ("**TERMINATION FOR DEFAULT**").

#### 28.8 Time for Correction of Deficiencies.

Microsoft shall correct to the satisfaction of County, at no additional cost to County, all Deficiencies in the Services. Microsoft shall initiate repairs on Deficiencies which have a critical or significant impact on County's operations within two (2) business days following notice from County and shall use all reasonable efforts to resolve the Deficiencies in the time frame set forth in the applicable SOS. Microsoft shall be solely liable for any direct costs incurred by County associated with any Deficiencies.

#### 28.9 Remedy.

In the event Microsoft fails the Acceptance Test, County may pursue any and all remedies set forth in this Master Agreement or as otherwise provided at law and/or in equity.

### 29. DISPUTE RESOLUTION

Microsoft and County shall act promptly and diligently to mutually resolve any disputes which may arise with respect to this Master Agreement. All such disputes shall be subject to the provisions of this Section 29.

29.1 Continued Performance.

Microsoft and County agree that the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder, provided that neither party is obliged to continue performance on the disputed portion of the services unless mutually agreed upon.

29.2 Costs.

If, as a result of such dispute, Microsoft fails to continue, without delay, its performance of any undisputed services hereunder, then any additional costs which may be incurred by Microsoft or County, as a result of Microsoft's failure to continue to so perform, shall be borne by Microsoft, and Microsoft shall make no claim whatsoever against County for such costs. Microsoft shall promptly reimburse County for such costs, as determined by County, or County may deduct all such costs from any amounts due to Microsoft from County, whether under this Master Agreement or otherwise.

29.3 Escalation.

In the event of any dispute between the parties with respect to this Master Agreement or any SOS issued hereunder, Microsoft's Contracts Executive – for PSS SOSs, or its Contracts Specialist – for MCS SOSs, and County Project Director for the applicable SOS shall submit the matter to their respective next higher level of management for the purpose of endeavoring to resolve such dispute. In the event that Microsoft's Engagement Manager and County's Program Manager are unable to resolve the dispute within a reasonable time not to exceed five (5) days from the date of submission of the dispute to them, then the matter shall be immediately submitted to Microsoft's Contract Manager and County's Program Director for further consideration and discussion to attempt to resolve the dispute. If Microsoft's Contract Manager and County's Program Director cannot resolve the dispute, or either one of them determines that they are not making reasonable progress toward resolution of the dispute within five (5) business days after the dispute is first submitted to them, then the issue shall proceed to judicial, contractual, and/or equitable remedies.

29.4 Limitation on Use of Dispute Resolution.

Notwithstanding any other provision of this Master Agreement, County's right to terminate this Master Agreement pursuant to Section 31 (**TERMINATION FOR INSOLVENCY**), Section 36 (**TERMINATION FOR CONVENIENCE**), Section 35 ("**TERMINATION FOR IMPROPER CONSIDERATION**"), and the parties' right to seek injunctive relief to enforce the provisions of Section 23 (**CONFIDENTIALITY**), shall not be subject to this Dispute Resolution Procedure. The preceding sentence is intended only as a clarification of the parties' rights, and shall not be deemed to impair any claims that one

may have against the other, or any right to assert such claims after any such termination or such injunctive relief has been obtained.

### 30. NOTICES

All notices or demands required or permitted to be given or made under this Master Agreement, unless otherwise specified, shall be in writing and shall be addressed to the parties at the following addresses and delivered: (1) by hand, with signed receipt, (2) by first-class registered or certified mail, postage prepaid, or (3) by national overnight courier service (e.g., FedEx or DHL). Notices or demands shall be deemed given at the time of signed receipt in the case of hand-delivery, three (3) days after deposit in the United States mail as set forth above, or two (2) working days after deposit with the national overnight courier service. Addresses may be changed by either party giving ten (10) days prior written notice thereof to the other party. County's Program Director shall have the authority to issue all notices or demands which are required or permitted by County under this Master Agreement.

#### 30.1 Notices To County.

JON W. FULLINWIDER  
CHIEF INFORMATION OFFICER  
493 KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET  
LOS ANGELES, CA 90012

Phone: (213) 974-2008  
Facsimile: (213) 633-4733

#### 30.2 Notices To Contractor.

DAVID GALLAGHER, CONTRACTS MANAGER  
MICROSOFT CORPORATION  
5335 WISCONSIN AVE., NW, STE 600  
WASHINGTON DC 20015

Phone: (202) 243-6702  
Facsimile: (425) 708-0482  
Electronic mail: dgallagh@microsoft.com

### **31. TERMINATION FOR INSOLVENCY**

Microsoft shall be deemed to be insolvent and County may immediately terminate this Master Agreement or any SOS issued hereunder at any time following the occurrence of any of the following circumstances:

- a) a voluntary or involuntary petition has been filed under the United States Bankruptcy Code regarding Microsoft which is not dismissed within sixty (60) days;
- b) a receiver or trustee has been appointed for Microsoft; or,
- c) Microsoft has executed a general assignment for the benefit of creditors.

The rights and remedies of County provided in this Section 31 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Master Agreement.

### **32. APPLICATION OF BANKRUPTCY CODE SECTION 365(n)**

Microsoft agrees that if Microsoft, as a debtor-in-possession, or if a trustee in bankruptcy, rejects this Master Agreement, County may elect to retain its rights under this Master Agreement, as provided under Section 365(n) of the United States Bankruptcy Code (11 United States Code, Section 365(n)).

### **33. TERMINATION FOR DEFAULT**

Either party may, by written notice to the other party, terminate the whole or any part of this Master Agreement if the other party has materially breached this Master Agreement. County may, by written notice to Microsoft terminate the whole or any part of this Master Agreement if any of the following occur:

- a) Microsoft fails to perform or provide any task, subtask, deliverable, goods, Service, or other work within: (i) the times specified in this Master Agreement, or in any SOS issued hereunder, including the applicable notice and/or cure periods, if any (if no cure period is specified, Microsoft shall have fifteen (15) days to cure prior to termination under this Section 33); or (ii) any duly authorized extensions thereof (provided that nothing in this Section 33 shall in any way limit or modify any rights of County or obligations of Microsoft relating to timely performance by Microsoft, as otherwise set forth in this Master Agreement); or
- b) Microsoft fails to perform or comply with any of the other provisions of this Master Agreement, or so fails to make progress as to endanger performance of this Master Agreement in accordance with its terms and, in either of these two circumstances, does not cure such failure within a period of fifteen (15) days (or

such longer period as County may authorize in writing) after receipt of written notice from County specifying such failure; provided that Microsoft shall not be entitled to any cure period, and County may terminate this Master Agreement immediately, in the event that County determines that Microsoft's failure to perform or comply is not reasonably capable of being cured or cannot be cured by Microsoft in a reasonable time. If, pursuant to the preceding sentence, County has terminated this Master Agreement without providing a cure period, and subsequently a final determination is made that the default was capable of being cured, then the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 36 ("**TERMINATION FOR CONVENIENCE**").

In the event of a termination by County pursuant to this Section 33, County agrees to pay Microsoft for all work that County had previously accepted through issuance of an Acceptance Certificate.

In the event that County terminates this Master Agreement as provided in Section 31 ("**TERMINATION FOR INSOLVENCY**"), or this Section 33, then: Microsoft shall refund to the County all monies paid for unexpired PSS SOSs and the fees for all MCS work paid-for, but not accepted. Such refund by Microsoft shall be made within fifteen (15) days from the date of the Notice of Default.

If, after County has given notice of termination under the provisions of this Section 33, it is determined by County that Microsoft was not in default under the provisions of this Section 33, or that the default was excusable under the provisions of this Section 33, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 36 ("**TERMINATION FOR CONVENIENCE**").

The rights and remedies of County provided in this Section 33 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Master Agreement.

#### **34. FORCE MAJEURE**

Except as otherwise expressly provided Microsoft shall not be liable for any such excess costs, if its failure to perform this Master Agreement arises out of fires, floods, epidemics, quarantine restrictions, other Acts of God, strikes or freight embargoes, but in every such case the failure to perform must be completely beyond the control and without any fault or negligence of Microsoft. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both Microsoft and Subcontractor, and without any fault or negligence of either of them, Microsoft shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources

in sufficient time to permit Microsoft to meet the required performance schedule. Microsoft agrees to use all reasonable commercial efforts to obtain such goods or services from other sources. As used in this Section 33, the terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) at any tier.

**35. TERMINATION FOR IMPROPER CONSIDERATION**

County may, by written notice to Microsoft, immediately terminate the right of Microsoft to proceed under this Master Agreement if it is found that consideration, in any form, was offered or given by Microsoft, either directly or through an intermediary, to any County officer, employee or agent with the intent of securing this Master Agreement or securing favorable treatment with respect to the award, performance, amendment or extension of this Master Agreement or the making of any determinations with respect to Microsoft's performance pursuant to this Master Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Microsoft as it could pursue in the event of a material default hereunder by Microsoft. Microsoft shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to County's Manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861. Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel, entertainment or gifts.

**36. TERMINATION FOR CONVENIENCE**

This Master Agreement may be terminated, in whole or in part, when such action is deemed by County to be in its best interest. Termination of work hereunder shall be effected by delivery to Microsoft of a notice of termination specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be not less than thirty (30) days after the notice is sent. In the event County has purported to terminate this Master Agreement for default by notice pursuant to Section 33 ("**TERMINATION FOR DEFAULT**"), and it has later been determined that Microsoft was not in default, then at County's option such notice shall be deemed a notice of termination for convenience under this Section 36, with no additional notice required.

After receipt of a notice of termination, and except as otherwise directed by County, Microsoft shall:

- a) Stop work under this Master Agreement on the date and to the extent specified in such notice.
- b) Transfer to County, to the extent not previously transferred to County, all work in progress and all other completed work. County shall pay for such completed work

pursuant to a fee and invoice schedule that has been mutually agreed to by the parties.

- c) Complete performance of such part of the work as shall not have been terminated by such notice.

Except as provided in Section 33, nothing in this Section 36 shall be deemed to prejudice any right of Microsoft to make a claim against County in accordance with applicable law and regular County procedures for payment for work performed through the effective date of County's termination of this Master Agreement for convenience.

For a period of five (5) years after final settlement under this Master Agreement, Microsoft shall, upon thirty (30) days prior written notice from County's Program Manager, make available to County, during normal business hours, time records, invoices, status reports, deliverables and receipts of Microsoft under this Master Agreement in accordance with the procedures set forth in Section 47 ("**RECORDS AND AUDITS**") with respect to the termination of work hereunder. All such material shall be maintained by Microsoft at a location in Los Angeles County, provided that if such material is located outside Los Angeles County, then, at County's option, Microsoft shall pay County for travel, per diem, and other costs incurred by County to examine, audit, excerpt, copy or transcribe such material at such other location.

### **37. CONFLICT OF INTEREST/CONTRACTS PROHIBITED**

Microsoft shall inform the County Program Director if it becomes aware that any County employee whose position in the County enables him/her to influence the County's actions with respect to this Master Agreement or any spouse or economic dependent of such employee is employed by Microsoft during the term of this Master Agreement. Microsoft represents and warrants that it is aware of and has read Section 2.180.010 of the Los Angeles County Code, "Avoidance of Conflict of Interest," and that execution of this Master Agreement between Microsoft and County will not violate said Section. Anyone who is a former employee of County at the time of execution of this Master Agreement or who subsequently becomes affiliated with Microsoft in any capacity (employee, associate or partner) shall not: 1) participate in the services provided by Microsoft to County, or 2) become a partner, shareholder or otherwise share in the profits of Microsoft for a period of one (1) year from the date the former County employee left County employment.

### **38. NONDISCRIMINATION IN EMPLOYMENT**

Microsoft certifies that all persons employed by Microsoft, its affiliates, subsidiaries or holding companies are and will be treated equally by it without regard to or because of race, religion, ancestry, national origin, sex, age, condition of physical handicap, marital status or political affiliation, and in compliance with all applicable federal and state anti-discrimination laws and regulations.



Microsoft shall take reasonable efforts to ensure that qualified applicants are employed and that employees are treated during employment without regard to race, religion, ancestry, national origin, sex, age, condition of physical handicap, marital status or political affiliation. Such action shall include, but is not limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

Microsoft shall deal with its subcontractors, bidders or vendors without regard to or because of race, religion, ancestry, national origin, sex, age, condition of physical handicap, marital status or political affiliation.

Microsoft shall allow County representatives access to its employment records during regular business hours to verify compliance with the provisions of this Section 38 when so requested by County.

If County finds that any of the above provisions have been violated, the same shall constitute a material breach of contract upon which County may determine to cancel, terminate or suspend this Master Agreement. While County reserves the right to determine independently that the antidiscrimination provisions of this Master Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Microsoft has violated state or federal anti-discrimination laws or regulations shall constitute a finding by County that Microsoft has violated the discrimination provisions of this Master Agreement.

The parties agree that in the event Microsoft violates the antidiscrimination provisions of this Master Agreement, County shall, at its option, be entitled to a sum of five hundred dollars (\$500) pursuant to California Civil Code Section 1671, as liquidated damages in lieu of cancelling, terminating or suspending this Master Agreement.

### **39. ASSURANCE OF COMPLIANCE WITH CIVIL RIGHTS LAWS**

Microsoft hereby assures that it shall comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000e through 2000e(17), to the end that no person shall, on the grounds of race, religion, ancestry, national origin, sex, age, condition of physical handicap, marital status or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Master Agreement or under any project, program or activity supported by this Master Agreement.

**40. MINORITY/WOMEN PARTICIPATION AND OWNERSHIP**

In accordance with Exhibit D, Microsoft shall provide County a breakdown of its minority/women participation, i.e., partners, associates, administrative, management, courier, clerical, etc. If applicable, Microsoft shall also provide County percentage of minority/women ownership. Microsoft shall provide updates to the minority/women participation and ownership information upon thirty (30) days written request from County.

**41. EMPLOYMENT ELIGIBILITY VERIFICATION**

Microsoft warrants it fully complies with all federal statutes and regulations regarding the employment of aliens and others, and that all its employees performing services hereunder meet the citizenship or alien status requirements contained in federal statutes and regulations. Microsoft shall obtain, from all covered employees performing services hereunder, all verification and other documentation of employment eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. Microsoft shall retain all such documentation for the period prescribed by law. Microsoft shall indemnify, defend, and hold harmless County, its officers and employees from and against any employer sanctions and any other liability which may be assessed against Microsoft or County in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Master Agreement.

**42. CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS**

Should Microsoft require additional or replacement personnel after the effective date of this Contract, Microsoft shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet Microsoft's minimum qualifications for the open position. For this purpose, consideration shall mean that Microsoft will interview qualified candidates. County will refer GAIN/GROW participants by job category to Microsoft.

**43. COMPLIANCE WITH SUPPORT REQUIREMENTS**

Microsoft shall fully comply with all lawfully served wage and earnings assignment orders and notices of assignment. Failure to comply with state and federal reporting requirements regarding employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment constitutes a default under this Master Agreement, and failure to cure the default within ninety (90) days of notice by the County shall subject this Master Agreement to termination and may be cause for debarment.

**44. ACKNOWLEDGMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT ENFORCEMENT**

Microsoft acknowledges that County places a high priority on the enforcement of child support laws and the apprehension of child support evaders. Microsoft understands that it is County's policy to encourage all County contractors to voluntarily post County's "L.A.'s Most Wanted: Delinquent Parents" poster in a prominent position at Microsoft's place of business. County will supply Microsoft with the poster to be used.

**45. NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT**

Microsoft shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in "Internal Revenue Services Notice 1015."

**46. CONTRACTOR RESPONSIBILITY AND DEBARMENT**

**46.1 Responsible Contractor.**

A Responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is County's policy to conduct business only with responsible contractors. Microsoft is hereby notified that, in accordance with Chapter 2.202 of the County Code, if County acquires information concerning the performance of Microsoft on this or other contracts which indicates that Microsoft is not responsible, County may, in addition to other remedies provided in the Master Agreement, debar Microsoft from bidding on County contracts for a specified period of time not to exceed three (3) years, and terminate any or all existing contracts Microsoft may have with County. County may debar Microsoft if the Board of Supervisors finds, in its discretion, that Microsoft has done any of the following:

- a) Violated any term of a contract with County; or
- b) Committed any act or omission which negatively reflects on Microsoft's quality, fitness or capacity to perform a contract with County or any other public entity, or engaged in a pattern or practice which negatively reflects on the same; or
- c) Committed an act or offense which indicates a lack of business integrity or business honesty; or
- d) Made or submitted a false claim against County or any other public entity.

#### 46.2 Debarment.

If there is evidence that Microsoft may be subject to debarment, County's Program Manager will notify Microsoft in writing of the evidence which is the basis for the proposed debarment and will advise Microsoft of the scheduled date for a debarment hearing before the Contractor Hearing Board. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. Microsoft and/or Microsoft's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a proposed decision, which shall contain a recommendation regarding whether Microsoft should be debarred, and, if so, the appropriate length of time of the debarment. If Microsoft fails to avail itself of the opportunity to submit evidence to the Contractor Hearing Board, it may be deemed to have waived all rights of appeal. A record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Contractor Hearing Board. These terms shall also apply to subcontractors under this Master Agreement.

#### 47. RECORDS AND AUDITS

Microsoft shall maintain accurate and complete financial records of its activities and operations relating to this Master Agreement in accordance with generally accepted accounting principles. Microsoft shall also maintain accurate and complete employment and other records relating to its performance of this Master Agreement. Microsoft agrees that County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy or transcribe non-confidential and non-proprietary information, which include time sheets, invoices, Service Deliverables, status reports, if applicable to evidencing Microsoft's performance of services for County under this Master Agreement. All such material shall be kept and maintained by Microsoft and shall be made available to County during the term of this Master Agreement and for a period of five (5) years thereafter unless County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by Microsoft at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at County's option, Microsoft shall pay County for travel, per diem, and other costs incurred by County to examine, audit, excerpt, copy or transcribe such material at such other location. Failure on the part of Microsoft to comply with any of the provisions of this Section 47 shall constitute a material breach of this Master Agreement upon which County may immediately terminate this Master Agreement pursuant to Section 33 ("**TERMINATION FOR DEFAULT**") of this Master Agreement.

**48. COUNTY AUDIT SETTLEMENTS**

If, at any time during or after the term of this Master Agreement, representatives of County conduct an audit of Microsoft regarding the work performed under this Master Agreement, and if such audit finds that County's dollar liability for any such work is less than payments made by County to Microsoft, then the difference, together with County's reasonable costs of audit, shall be either repaid by Microsoft to County by cash payment upon demand or, at the sole option of County, deducted from any amounts due to Microsoft from County, whether under this Master Agreement or otherwise.

**49. FAIR LABOR STANDARDS**

Microsoft shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless County, its officers, employees and agents from any and all third party liability including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs and attorneys' fees arising under any wage and hour law including, but not limited to, the Federal Fair Labor Standards Act, for work performed by Microsoft's employees for which County may be found jointly or solely liable.

**50. RESTRICTIONS ON LOBBYING**

**50.1 Federal Funds Projects.**

If any federal funds are to be used to pay a portion of any of Microsoft's work under this Master Agreement, Microsoft shall fully comply with all certification and disclosure requirements prescribed by Section 319 of Public Law 101-121 (31 United States Code Section 1352) and any implementing regulations, and shall ensure that each of its subcontractors receiving funds provided under this Master Agreement also fully complies with all such certification and disclosure requirements.

**50.2 County Projects.**

Microsoft and each County lobbyist or County lobbying firm, as defined in Los Angeles County Code Section 2.160.010, retained by Microsoft, shall fully comply with County's Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of Microsoft or any County lobbyist or County lobbying firm retained by Microsoft to fully comply with County Lobbyist Ordinance shall constitute a material breach of this Master Agreement, upon which County may immediately terminate or suspend this Master Agreement.

**51. FEDERAL ACCESS TO RECORDS**

If, and to the extent that Section 1861(v)(1)(i) of the Social Security Act (42 United States Code Section 1395(v)(1)(i)) is applicable, Microsoft agrees that for a period of five (5) years following the furnishing of services under this Master Agreement, Microsoft shall maintain and make available, upon written request, to the Secretary of the United States Department of Health and Human Services or the Comptroller General of the United States or to any of their authorized representatives, the time sheets, status reports, invoices, Services, and Deliverables of Microsoft which are required to verify the nature and extent of the costs of Services related to this Master Agreement. Furthermore, if Microsoft carries out any of the Services provided hereunder through any subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period with a related organization (as that term is defined under federal law), Microsoft will request that each subcontract shall provide for such access to the time sheets, status reports, and invoices of the subcontractor.

**52. ACCESS TO COUNTY FACILITIES**

Microsoft, its employees and agents, and its subcontractors will be granted access to County facilities, subject to Microsoft's prior notification to County's Project Director, for the purpose of executing Microsoft's obligations hereunder. Access to County facilities shall be restricted to normal business hours, from 8:00 a.m. until 5:00 p.m., Pacific Daylight Time, Monday through Friday, County observed holidays excepted. Access to County facilities outside of normal business hours must be approved in writing in advance by County's Project Director, which approval will not be unreasonably withheld. Microsoft shall have no tenancy, or any other property or other rights, in County facilities. While present at County facilities, Microsoft's personnel shall be accompanied by County personnel at all times, unless this requirement is waived in writing prior to such event by County's Project Director.

**53. AUTHORIZATION WARRANTY**

Microsoft represents and warrants that the person executing this Master Agreement or any amendment thereto pursuant to Microsoft is an authorized agent who has actual authority to bind Microsoft to each and every term, condition and obligation of this Master Agreement, and that all requirements of Microsoft have been fulfilled to provide such actual authority.

**54. GOVERNING LAW / VENUE**

This Master Agreement shall be governed by, and construed in accordance with, the laws of the State of California applicable to agreements made and to be performed within that State. Microsoft agrees and consents to the exclusive jurisdiction of the courts of the State

of California (except with respect to claims that are subject to exclusive federal subject matter jurisdiction, as to which Microsoft agrees and consents to the exclusive jurisdiction of the Federal District Court of the Central District of California) for all purposes regarding this Master Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles, California.

**55. COVENANT AGAINST CONTINGENT FEES**

Microsoft warrants and represents that no person or selling agency has been employed or retained to solicit or secure this Master Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or established commercial agencies regularly employed by Microsoft for the purpose of securing business. For any breach or violation of this warranty, County in its sole discretion, may terminate this Master Agreement as provided in Section 33 ("TERMINATION FOR DEFAULT") and may deduct from any amount otherwise payable to Microsoft the full amount of any such commission, percentage, brokerage or contingent fee.

**56. COMPLIANCE WITH APPLICABLE LAW**

Microsoft's activities hereunder shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, guidelines and directives, and all provisions required thereby to be included in this Master Agreement are hereby incorporated herein by reference. Microsoft shall have up to fifteen (15) days to correct any noncompliance with County rules, regulations, ordinances, guidelines and directives following written notice from County, including written copies of such applicable rules, regulations, ordinances, guidelines and/or directives.

**57. COMPLIANCE WITH JURY SERVICE PROGRAM**

This Master Agreement is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program"), as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code.

Unless Microsoft has demonstrated to the County's satisfaction either that Microsoft is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that Microsoft qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), Microsoft shall have and adhere to a written policy that provides that its employees shall receive from Microsoft, on an annual basis, no less than five (5) days of regular pay for actual jury service. The policy may provide that employees deposit any fees received for such jury service with Microsoft or that Microsoft deduct from the employee's regular pay the fees received for jury service.

For purposes of this Section 57, "Contractor" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County contractor and has received or will receive an aggregate sum of fifty thousand dollars (\$50,000) or more in any twelve (12) month period under one (1) or more County contracts or subcontracts. "Employee" means any California resident who is a full time employee of Contractor. "Full time" means forty (40) hours or more worked per week, or a lesser number of hours, if the lesser number is a recognized industry standard and is approved as such by the County. If Microsoft uses any subcontractor to perform services for the County under the Master Agreement, the subcontractor shall also be subject to the provisions of this Section 57. The provisions of this Section 57 shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the Master Agreement.

If Microsoft is not required to comply with the Jury Service Program when the Master Agreement commences, Microsoft shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and Microsoft shall immediately notify County if Microsoft at any time either comes within the Jury Service Program's definition of "Contractor" or if Microsoft no longer qualifies for an exception to the Program. In either event, Contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Master Agreement, and at its sole discretion, that Microsoft demonstrate to the County's satisfaction that Microsoft either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that Microsoft continues to qualify for an exception to the Program.

Microsoft's violation of this Section 57 of the Master Agreement may constitute a material breach of the Master Agreement. In the event of such material breach, County may, in its sole discretion, terminate the Master Agreement and/or bar Microsoft from the award of future County contracts for a period of time consistent with the seriousness of the breach.

#### **58. RECYCLED BOND PAPER**

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor shall use recycled-content paper to the maximum extent possible on this Contract.

#### **59. SAFELY SURRENDERED BABY LAW**

The Contractor shall notify and provide to its employees a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is available on the Internet at [www.babysafela.org](http://www.babysafela.org) for printing purposes.



**60. COUNTY'S QUALITY ASSURANCE PLAN**

County will evaluate Microsoft's performance under this Master Agreement at least annually. Such evaluation will include assessing Microsoft's compliance with all contract terms and performance standards. Deficiencies, which County determines are severe or continuing or may place performance of the Master Agreement in jeopardy if not corrected, will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by Microsoft and County. If improvement does not occur consistent with the corrective action measures, County may terminate this Master Agreement or seek other remedies as specified in this Master Agreement.

**61. SEVERABILITY**

If any provision of this Master Agreement is adjudged void or invalid for any reason whatsoever, but would be valid if part of the wording thereof were deleted or changed, then such provision shall apply with such modifications as may be necessary to make it valid and effective. In the event that one or more of the provisions of this Master Agreement is found to be invalid, illegal or unenforceable in any respect, such provision shall be deemed deleted here from and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

**62. NO MINIMUM REQUIREMENT**

Microsoft acknowledges and agrees that the County is not required to issue a minimum number of SOSs, or any at all, under this Master Agreement, and that Microsoft has received good and sufficient legal consideration by the establishment of a Master Agreement which may more readily facilitate Microsoft services to County.

IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Agreement to be subscribed by its Chair, and the seal of such Board of Supervisors to be hereto affixed and attested by the Executive Office thereof, and Microsoft has caused this Agreement to be subscribed in its behalf by its duly authorized officer on this \_\_\_\_\_ day, of \_\_\_\_\_ 2005.

COUNTY OF LOS ANGELES

By \_\_\_\_\_  
Chair, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS  
Executive Officer-Clerk of the  
Los Angeles County  
Board of Supervisors

By: \_\_\_\_\_

MICROSOFT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM

RAYMOND G. FORTNER, JR.  
County Counsel

By: \_\_\_\_\_

**Premier Support Services Description**

1. **OVERVIEW.** This Services Description describes the various types of Premier Support Services that may be obtained under this Master Services Agreement.

2. **AVAILABLE SERVICES.**

2.1 **Support Account Management.** Support Account Management services coordinates support and services. Microsoft shall provide a Services Resource identified in Exhibit A2 as "Technical Account Manager" [TAM] who advocates within Microsoft and establishes a team within Microsoft to manage and provide services under the applicable PSS Statement of Service [PSS SOS], Problem Resolution Support, and Support Assistance and Workshops. The Services Resource also serves as the point of information delivery and provides feedback from the County regarding the Services provided under this Master Agreement to other Microsoft groups. The Services Resource also provides the following services which will not be deducted from the pre-paid hours listed in the applicable PSS Statement of Service [PSS SOS]:

- a. Planning and Resource Facilitation. At the commencement of each PSS SOS, Microsoft's Services Resource shall conduct an orientation and planning session with Departmental management and staff via teleconference or onsite if an onsite visit has been purchased. The purpose of this meeting is to discuss the Services available, gather input regarding Department support needs, and jointly plan Service delivery.
- b. Status Meetings and Reporting. A monthly status report will be prepared and submitted to each PSS Project Director to summarize the Services delivered during the previous reporting period. Status meetings will be conducted as requested by each County Project Director to discuss Service activities, monitor satisfaction levels, and discuss actions or adjustments that may be required. Customized reporting will be provided at the request of any Project Director at additional decrement.
- c. Escalation Management. Support issues that require escalation to other resources within Microsoft will be closely managed by the Services Resource to expedite resolution.

2.2 **Support Assistance** provides short-term advice and guidance in connection with 1) Problem Resolution activities; 2) other activities necessary or advisable to avoid outages and other system performance problems and 3) requests for consultative assistance for design, development and deployment issues. Microsoft's Services Resource will work with County Project Director and Program Manager to determine specific consulting needs.

These Services will be provided through the prepaid Technical Account Hours.

Hours spent on these activities shall be decremented from these hours. The following describes the types of Support Assistance available under this subsection:

- i) Infrastructure Support Assistance. Infrastructure Support Assistance includes informal advice, guidance and knowledge transfer intended to help County implement Microsoft technologies in ways that avoid common support issues and decrease the likelihood of system outages. These services also help County to resolve problems that are not attributed to Microsoft Products including: errors caused by County's networking infrastructure, hardware, non-Microsoft software, operational procedures, architecture, IT service management process, system configuration or human error; multi-vendor coordination interoperability problems. Upon County's request, Microsoft will collaborate with third-party software suppliers to help resolve complex multi-vendor product interoperability issues.
- ii) Reviews. Each review is individually scoped and estimated prior to scheduling resources, and a written report is produced to document findings and recommendations. In order for Microsoft to complete reviews during the term of this Services Description, all requests for reviews and the applicable data must be submitted to Microsoft no later than 60 days prior to expiration date of the applicable SOS. Reviews to address design, development, deployment, and supportability issues including the following:
  - a) Supportability Review is an assessment of a current implementation or planned implementation of a specific system, migration, or upgrade and may include recommendations for a more supportable environment;
  - b) Technology Architecture Reviews examine the alignment and planned deployment of technology intended to address County's business goals or problems with a focus on determining how Microsoft's technology offerings best fit within County's overall technology architecture;
  - c) Application Design Reviews examine application or product component architecture, focusing on the design of components for deployment in a multi-tiered architecture model. This review specifically addresses issues including compliance with our component design guidelines, effective distributed component communication techniques,

and efficient use of runtime services;

- d) Code Reviews examine the specific, critical software components in County's applications for existing or expected problems. Microsoft will work with County to choose the appropriate components for analysis; Custom Reviews that can be crafted to meet County's specific needs as they relate to the use of Microsoft's technologies.
- iii) Development Support Assistance. Application Development Consulting helps County in the creation and development necessary to build internal applications on the Microsoft platform that integrate Microsoft technologies. Application Development Consulting specializes in Microsoft's development tools and technologies.
- iv) Lab Access. Microsoft can provide access to a lab facility to assist with product development, testing, and migration activities. These facilities must be scheduled in advance and are subject to availability.
- v) Application Performance Benchmarking assists in evaluating application performance and identify performance bottlenecks. The lab facilities can also be used to evaluate scalability limitations based on specific objectives.
- vi) Prototyping can assist in building proof-of-concept scenarios or workarounds in order to validate implementation of Microsoft Technology.
- vii) Porting and Migration Assistance will devise strategies for porting and migrating applications and data to Microsoft technologies. The lab facilities can be used to validate specific techniques and identify potential problem areas.
- viii) Alliance Support is provided if needed by an Alliance Support Technician [AST] who focuses on County's specific technology environments. This technical professional with specific technology skills suited to County's environment will form a close working relationship with County staff and provide a natural extension to Microsoft's support team.

**2.3 Problem Resolution Support.** Problem Resolution Support provides assistance for problems with specific symptoms encountered while using Microsoft products, where there is a reasonable expectation that the problems are caused by Microsoft products. Problem Resolution

Support is available 24 hours a day, 7 days a week. Requests for support may be submitted via telephone or electronically through the Premier online website by County's designated contacts, except for Severity 1 and A which must be submitted via telephone as set forth below in. Problem Resolution Support can include any combination of the following:

- a. Problem Request (Break-Fix). An assisted break-fix support request, also known as an incident, is defined as a single support issue and the reasonable effort needed to resolve it. A single support issue is a problem that cannot be broken down into subordinate issues. If a problem consists of subordinate issues, each shall be considered a separate incident. In certain situations, Microsoft may provide County with a modification to the commercially available Microsoft product software code to address specific critical problems ("Hotfixes") in response to an assisted break-fix support request. Hotfixes are designed to address County's specific problems and are not regression tested. Except as otherwise provided herein or in an Exhibit, Hotfixes may not be distributed to unaffiliated third parties without written consent of Microsoft's PSS Contracts Executive.
- b. Fixed Priced Incidents. These include the commercially reasonable amount of Services necessary to troubleshoot and resolve the support issue. The total number of incidents is set forth in each PSS SOS. Microsoft will not decrement for a support incident when resolution involves Microsoft having to code a software solution to resolve an incident. An incident is considered closed when reasonable effort has been completed and County's Project Director for the applicable SOS agrees to closure of the case and a PSS Acceptance Certificate is issued. The support engineer will follow up with an email confirmation to the County's Program Manager. Should County's Project Director disagree with closure for any reason, the incident will remain open via escalation until the County is satisfied with the resolution.
- c. Rapid On Site Support Services. On site emergency support is available through on site visits that may be provided as an additional services through a change order to an existing PAA SOS if other resources are insufficient to resolve problems. It is dependent on Microsoft's resource availability.

Performance Standards:

Following are the Performance Standards under which each PSS will be conducted. County's Project Director for the applicable PSS SOS shall set the initial severity and may request a change in severity level at any time. The incident severity will determine the response levels within Microsoft and estimated response times and County's responsibilities are defined in the following table:

| Severity | Customer's Situation  | Expected Microsoft Response  | Expected Customer Response   |
|----------|---|--|--|
| 1        | <ul style="list-style-type: none"><li>· Critical business impact:</li><li>· Customer has complete loss of a core (mission critical) business process and work cannot reasonably continue</li><li>· Needs immediate attention</li></ul>                          | <ul style="list-style-type: none"><li>· MS Resources at customer site as soon as possible.</li><li>· Rapid Escalation within Microsoft to Product teams</li><li>· Notification of Senior Executives at Microsoft</li><li>· 1<sup>st</sup> call response in 1 hour or less</li><li>· Allocation of appropriate resources to sustain continuous effort on a 24x7 basis</li></ul> | <ul style="list-style-type: none"><li>· Notification of Senior Department Executives and Program Manager at customer site</li><li>· Allocation of appropriate resources to sustain continuous effort on a 24x7 basis</li><li>· Rapid access and response from change control authority</li></ul> |
| A        | <ul style="list-style-type: none"><li>· Significant business impact:</li><li>· Customer's business has significant loss or degradation of services</li><li>· Needs attention within 1 hour</li></ul>  | <ul style="list-style-type: none"><li>· 1<sup>st</sup> call response in 1 hour or less</li><li>· Continuous effort on a 24x7 basis</li><li>· Notification of Senior Managers at Microsoft</li></ul>  | <ul style="list-style-type: none"><li>· Allocation of appropriate resources to sustain continuous effort on a 24x7 basis</li><li>· Rapid access and response from change control authority</li><li>· Management notification</li></ul>   |
| B        | <ul style="list-style-type: none"><li>· Moderate business impact:</li><li>· Customer's business has moderate loss or degradation of services but work can reasonably continue to an impaired manner</li><li>· Needs attention within 2 Business Hours</li></ul> | <ul style="list-style-type: none"><li>· 1<sup>st</sup> call response in 2 hours or less</li><li>· Continuous effort during Business Hours from 6 a.m. to 6 p.m., Pacific Time, Monday through Friday, excluding County holidays</li></ul>  | <ul style="list-style-type: none"><li>· Allocation of appropriate resources to sustain Business Hours continuous effort</li><li>· Access and response from change control authority within 4 Business Hours</li></ul>  |
| C        | <ul style="list-style-type: none"><li>· Minimum business impact:</li><li>· Customer's business is substantially functioning with minor or no impediments of services</li><li>· Needs attention within 4 Business Hours</li></ul>                                | <ul style="list-style-type: none"><li>· 1<sup>st</sup> call response in 4 hours or less</li><li>· Effort during Business Hours only</li></ul>  | <ul style="list-style-type: none"><li>· Accurate contact information</li><li>· Response within 24 hours</li></ul>  |

County may be required to perform problem determination and resolution activities as requested by Microsoft, including problem performing network traces, capturing error messages, collecting configuration information, changing product configurations, installing new versions of software or new components, or modifying processes.

County departments are responsible for implementing the procedures necessary to safeguard the integrity and security of County software and data from unauthorized access and to reconstruct lost or altered files resulting from catastrophic failures.

**2.4 Workshops.** Workshops are designed to reduce the number and minimize the impact of problems related to Microsoft products experienced by County. Workshops include the following:

- a. Workshops. Instructor-led training sessions that emphasize Microsoft technologies at a County facility or on location at Microsoft. If a County Department elects to have a workshop conducted at its facility, Microsoft will provide County with specifications for configuring County's environment prior to the delivery of the workshops. Workshops are individually scoped and priced depending upon the length, delivery location and material presented. Microsoft's Services Resource will provide County's Program Manager with a current list of available workshops on an ongoing basis.
- b. Premier Events. Microsoft will provide broad and deep technical development-focused presentations, combined with hands-on labs that provide training and facilitate your implementations of Microsoft technologies. These events provide the opportunity to interact with Microsoft product groups, Premier support development resources and marketing contacts. Microsoft's Services Resource will provide County's Program Manager with notification of scheduled events.

**2.5 Information Services.** Information Services provide technical information about Microsoft products and support tools to implement and operate Microsoft products in a more efficient and effective manner. Information Services include the following:

- a. Premier online website. The Premier online website provides access to the following information resources at no charge:
  - Regularly updated product news flashes documenting key support and operational information about Microsoft products.
  - Critical problem alerts notifying County of potentially high-impact problems.
  - Web response tool for submitting and checking the status of support incidents.
  - Microsoft KnowledgeBase of technical articles and troubleshooting tools and guides.
- b. Support Webcasts. Support webcasts are regularly scheduled webcast discussions



led by Microsoft program managers, developers and professionals covering key areas of Microsoft technology. These are provided at no additional charge.

Optional Information Services where additional fees apply:

- Microsoft TechNet Plus CD or DVD. Single server license of TechNet Plus provides an information resource that includes technical documentation, resource kits, the most recent service packs, and updated drivers and patches.
- Optional Microsoft Developer Network (MSDN) CD or DVD. Universal Edition, single user license of MSDN provides access to an extensive collection of programming information, development toolkits, and sample code library.

**3. PREREQUISITES AND ASSUMPTIONS.** Delivery of Services under this Services Description is based upon the following Prerequisites and Assumptions:

- a. All Services will be provided remotely to County locations in the United States unless otherwise set forth in an Exhibit to this Services Description.
- b. All Services will be provided in the English language unless otherwise agreed to by County and Microsoft in writing or in an Exhibit to this Services Description.
- c. Microsoft will provide support for all United States versions of commercially released generally available Microsoft products unless otherwise set forth in an Exhibit to this Services Description or specifically excluded on the Premier online website. Hotfix support is not available for Microsoft products that have entered the Extended Phase of support unless County has purchased through the applicable PSS SOS.
- d. Support for pre-release products is not provided except as otherwise provided in an attached SOS.
- e. Support Assistance is dependent upon the availability of resources.
- f. Microsoft can access County's system via remote dial-in to analyze problems at County's request. Microsoft personnel will access only those systems expressly authorized in writing by County's SOS Project Director. Microsoft may provide County with software to assist with problem diagnosis and/or resolution. Such software is Microsoft's property and must be returned promptly upon request. In order to utilize remote dial-in assistance, County must provide Microsoft with the appropriate access and necessary equipment.
- g. County must have access to the Internet in order to take advantage of Internet-based services.

PSS Fee Schedule**Public Sector Published Price List for LA County****Premier Support Line Item Pricing**

|   |  |  |
|---|--|--|
| Technical Account Manager (TAM)<br>Hourly Rate (Inclusive of Support<br>Account Management and Support<br>Assistance) | \$172/hr   | Entry level Statement of Service requires a minimum of 160 hours. This hourly component is required to be purchased in conjunction with Problem Resolution Incidents. Additional hours may be purchased as necessary during the Statement of Service's Standard Period of Performance. |
| Problem Resolution Incident   | \$750 each   | Entry level Statement of Service requires minimum of 10 Incidents. Additional incidents (5 minimum) may be purchased during the Statement of Service's Standard Period of Performance and requires the purchase of 4 hours of TAM time per incident.                                   |
| Alliance Support Technician   | \$202/hr   | Purchased in conjunction with a dedicated TAM and minimum 400 hours. AST time not to exceed TAM hours.   |
| Application Development Consultant  | \$202/hr   | Purchased in minimum blocks of 200 hours   |
| TAM Onsite Visit  | \$2000   | 2 days for each visit. Site visit charge is per SOS. This is a flat rate & includes T & E.   |
| ROSS On-site Visit  | \$3,750  | 1 Day Visit  |
| ROSS On-site Visit  | \$6,000  | 2 Day Visit  |
| TechNet Plus Subscription   | \$1000   | Maximum of 10.   |
| MSDN Universal Subscription   | \$2,800  | Maximum of 10.   |
| Workshops   | \$5,250 for<br>one day/<br>\$7,200/<br>For two<br>days | One day workshop based on dedicated delivery to a single customer. Customization available   |

## Note:

All Rates are *fully-burdened*. No additional payments shall be made by County associated with travel, meals, expenses, incidentals, sales tax or any other costs not explicitly defined in EXHIBIT A2.

**POINT OF CONTACT FOR MORE INFORMATION:****PREMIER SUPPORT****Margaret Gardiner**

Premier Contract Executive

Phone (425) 704-4864

FAX (425) 708-0417

[margardi@Microsoft.com](mailto:margardi@Microsoft.com)

need price for Press Book Packages

**PSS SOS ISSUANCE PROCESS**

A. County Department(s) shall submit a proposed Statement of Services to County's Program Director for approval, using Exhibit A7 ("**Microsoft Premier Support Services Statement of Services Form**"). The proposed SOS may only be for Services which are listed and described in Exhibit A1 ("**Microsoft Premier Support Services Description**").

B. Each PSS Statement of Services shall minimally have 160 Technical Account Hours and 10 Problem Resolution Incidents.

C. County Departments may combine under one PSS Statement of Services to meet the Minimum Requirements stated above (Subsection B).

D. On the recommendation of County's Project Director for the proposed SOS, County's Program Manager shall submit the proposed SOS to Microsoft, which shall, at no cost to County, work closely with each participating County Department to right-size and customize the proposed SOS so that it will be most appropriate for that Department. The proposed PSS SOS shall be executed by authorized officials of Microsoft.

E. Prior to submitting the proposed SOS to County's Program Manager for final review, the County's Project Director for the PSS SOS shall provide documentation establishing that sufficient funding for the SOS has been identified.

F. Before requesting approval by County's Program Director, County's Program Manager shall confirm in writing that the requirements of this SOS Issuance Process have been met.

G. On the recommendation of County's Program Manager, County Program Director may approve and execute the proposed SOS, and issue it to Microsoft.

H. All PSS pricing is fully burdened – no additional payments shall be made by County associated with travel, meals, expenses, incidentals, or any other costs not explicitly defined in Exhibit A2("Microsoft PSS Fee Schedule") and stated in the respective PSS SOS.

I. Each PSS Statement of Services shall have a Standard Period of Performance that begins at the SOS's Effective Date and ends one year later or at the end of the Term of this Master Agreement, whichever comes first. Each PSS SOS shall also specifically state the type, level and quantity of Services to be provided and the maximum payment for the Services. The SOS shall also state the expected Service level(s) and technical contacts information.

J. Using a PSS Change Notice in the form of Exhibit A9 and as approved by County's Program Director, as set forth in the body of this Master Agreement at Subsection 22.4

(SOS Change Notices), supplemental PSS services including additional TAM Hours as well as those provided by Alliance Support Technicians, Application Development Consultants and those provided through Rapid On Site Services, may, if needed, be acquired in the increments as stated in Exhibit A2 during the Standard Period of Performance of a PSS SOS. The Standard Period of Performance for the supplemental services shall be the same as under the initial SOS.

K. Using a PSS Change Notice in the form of Exhibit A9 and as approved by County's Program Director, as set forth in the body of this Master Agreement at Subsection 22.4 (SOS Change Notices), County shall have the right to acquire additional Technical Account Hours in any increment during the Standard Period of Performance of an existing PSS SOS.

L. Using a PSS Change Notice in the form of Exhibit A9 and as approved by County's Program Director, as set forth in the body of this Master Agreement at Subsection 22.4 (SOS Change Notices), County shall have the right to acquire additional Problem Resolution Incidents in any increment with a minimum of 5 incidents during the Standard Period of Performance. Each additional incident requires the purchase of 4 Technical Account Hours.

M. At least 90 days prior to the end of the Standard Period of Performance of each PSS SOS Microsoft shall, at no cost to County, assess the usage under that Statement of Services, recommend in writing options for complete use of the remaining pre-purchased Services, and propose a PSS Statement of Services for the following year that considers past and projected usage by that Department.

N. Using a PSS Change Notice in the form of Exhibit A9 and as approved by County's Program Director, as set forth in the body of this Master Agreement at Subsection 22.4 (SOS Change Notices), any unused services in any PSS SOS may be converted on a dollar for dollar value basis to any other services described in A1 at the rates set forth in Exhibit A2 at any time during the Standard Period of Performance of any PSS SOS to any other Services set forth in Exhibit A1 except for MSDN and TechNet Subscriptions (unless approved by Microsoft's PSS Contracts Executive.)

O. In addition to the provisions of Paragraph N above, any PSS Services that have not been used or delivered during the Standard Period of Performance, shall automatically be granted an Extended Delivery Period, which shall be 60 days immediately following the Standard Period of Performance, to allow the use of those prepaid services. The Extended Delivery Period may be further extended an additional 30 days, for a total of 90 days, upon approval in writing by both County's Program Director and Microsoft's PSS Contracts Executive. County Project Directors, as identified in the applicable Statement of Services, shall notify County's Program Manager of the Service(s) that will fall within the Extended Delivery Period and shall work with Microsoft staff and County's Program Manager to effectuate such extension time.

P. Services under a PSS Statement of Services may be used by other County Departments provided that County's Project Manager(s), as identified in the applicable Statement of Services, and County's Program Manager, approve in writing. The recipient County agencies

need not have an active PSS Statement of Service established with Microsoft. The use of such Services shall be identified accordingly on the reporting for the originating PSS Statement of Services.

Q. Services provided under a Statement of Service shall be charged by Microsoft in the manner most cost-effective to the County.

**MICROSOFT PREMIER SUPPORT SERVICES  
SERVICE ACCEPTANCE CERTIFICATE**  
Agreement # \_\_\_\_\_

|  |              |
|--|--------------|
| Department Name: _____   |              |
| Microsoft Premier Support Services – Statement of Services – Period<br>From: _____ To: _____ | SOS #: _____ |
| Service Description  |              |
|  |              |
| Responsible Microsoft Resource: _____  |              |
| Service Status   | Date:        |
|  |              |
| Microsoft Consulting Services Attestation Of Completion:                                     |              |
| PSS Project Manager (Signature) _____  | Date _____   |
| Certification Of Acceptable Completion Of Work   |              |
| County Project Manager Certification   | Date:        |
| Print Name:  | Signature:   |
| Email:   | Phone #:     |
| County Project Manager Comments:   |              |
|  |              |

10/20/03

**COPY MICROSOFT MASTER SERVICES AGREEMENT COUNTY PROGRAM MANAGER, CIO OFFICE**

## Microsoft Customer Reporting Framework

### Exhibit A5 – PSS Reporting Form

**Los Angeles County , Date mm/dd/yy**

Date Created:

## Customer Activity Report - Month / Year

### Account Information

**Los Angeles: Department Name**

Address  
LOS ANGELES, CA  
90051  
United States

[Back to top](#)

### Executive Summary

Summary of major services and activities are entered here to include:  
Reactive onsite support, Proactive support, Critical situations, Site Visits and Status summaries of on-going projects.

### Service Balances Summary

| Los Angeles County : Dept of (Department name) Premier |                                    |               |      |             |
|--|------------------------------------|---------------|------|-------------|
| Category   | Service                            | Start Balance | Used | End Balance |
| <b>Service Account Management</b>                      |                                    |               |      |             |
|  | Escalation Management              |               | 0:00 |             |
|  | General Account Management         |               | 0:00 |             |
|  | Planning and Resource Facilitation |               | 0:00 |             |
| <b>Problem Resolution</b>                              |                                    |               |      |             |
|  | Problem Resolution Incidents       |               |      |             |
| <b>Information Services</b>                            |                                    |               |      |             |
|  | MSDN Subscription                  |               |      |             |
|  | TechNET Subscription               |               |      |             |

[Back to top](#)

## Service Details

| Services Management Details |                            |                                  |                |                 |
|-----------------------------|----------------------------|----------------------------------|----------------|-----------------|
| Date                        | Activity Type              | Description                      | Billed (hours) | Balance (hours) |
| Start Balance               |                            |                                  |                |                 |
|                             | General Account Management | Orientation and Planning session |                |                 |
| End Balance                 |                            |                                  |                |                 |
|                             |                            |                                  |                | 0               |

[Back to top](#)

| Problem Resolution: Problem Resolution Incident Details |      |             |        |      |        |         |
|---|------|-------------|--------|------|--------|---------|
| Billing Date  | Case | Description | Status | Type | Charge | Balance |
| Start Balance   |      |             |        |      |        |         |
|   | SRX  |             |        |      |        |         |
| End Balance   |      |             |        |      |        |         |

[Back to top](#)

## Additional Services

| Onsite Visits and Critical Situations |      |             |        |         |              |                    |
|---------------------------------------|------|-------------|--------|---------|--------------|--------------------|
| Last Activity Date                    | Case | Description | Status | Product | Onsite Visit | Critical Situation |
|                                       | SRX  |             |        |         |              |                    |
|                                       | SRX  |             |        |         |              |                    |
|                                       | SRX  |             |        |         |              |                    |

[Back to top](#)

## Additional Information

| Summary of Incidents by Product |                     |                      |                               |                             |                |
|---------------------------------|---------------------|----------------------|-------------------------------|-----------------------------|----------------|
| Product                         | Incidents in Period | Avg. Days to Resolve | Avg. Time to Solution (hours) | Avg. Billable Labor (hours) | Avg. Days Open |
| Total                           |                     |                      |                               |                             |                |

[Back to top](#)

| Summary of Incidents by Current Severity |                     |                      |                               |                             |                |
|--|---------------------|----------------------|-------------------------------|-----------------------------|----------------|
| Current Severity                         | Incidents in Period | Avg. Days to Resolve | Avg. Time to Solution (hours) | Avg. Billable Labor (hours) | Avg. Days Open |
| 1 - Catastrophic                         | 0                   | 0                    | 0:00                          | 0:00                        | 0              |
| A - Critical                             | 0                   | 0                    | 0:00                          | 0:00                        | 0              |
| B - Urgent                               | 0                   | 0                    | 0:00                          | 0:00                        | 0              |
| C - Important                            | 0                   | 0                    | 0:00                          | 0:00                        | 0              |
| D - Monitor                              | 0                   | 0                    | 0:00                          | 0:00                        | 0              |



|              |          |          |          |          |          |
|--------------|----------|----------|----------|----------|----------|
| <b>Total</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |
|--------------|----------|----------|----------|----------|----------|

[Back to top](#)

| <b>Summary of Incidents by Contact</b> |                            |                             |                                      |                                    |                       |
|--|----------------------------|-----------------------------|--------------------------------------|------------------------------------|-----------------------|
| <b>Contact</b>                         | <b>Incidents in Period</b> | <b>Avg. Days to Resolve</b> | <b>Avg. Time to Solution (hours)</b> | <b>Avg. Billable Labor (hours)</b> | <b>Avg. Days Open</b> |
| Customer name                          | 0                          | 0                           | 0                                    | 0                                  | 0                     |
| <b>Total</b>                           | <b>0</b>                   | <b>0</b>                    | <b>0</b>                             | <b>0</b>                           | <b>0</b>              |

[Back to top](#)

## Statement Components

| <b>Los Angeles County : Dept of (Department name) Statement Components</b> |                |               |                   |                        |                                  |                          |                                 |
|--|----------------|---------------|-------------------|------------------------|----------------------------------|--------------------------|---------------------------------|
| <b>Schedule</b>  | <b>Package</b> | <b>Status</b> | <b>Start Date</b> | <b>Expiration Date</b> | <b>Customer Service Managers</b> | <b>Microsoft Contact</b> | <b>Microsoft Backup Contact</b> |
| Los Angeles Dept of (Dept. Name)   |                | Active        |                   |                        | CSM name                         | TAM name                 | TAM name                        |

[Back to top](#)

## Key Contacts

### Los Angeles Dept of (Department name) Premier Key Contacts

CSM / Administrator:  
Email:  
Phone:

[Back to top](#)

## Microsoft Key Service Contacts

TAM:  
Email:  
Phone:

[Back to top](#)

**PSS Escalation List**

**Management Escalation Path**

Technical Account Manager – Jim Heflin (425) 704-4882  
Support Engagement Manager – Tulio Anzola (832) 651-3260  
Support Practice Manager – David Kirgis (469) 775-7927  
General Manager Public Sector Services – Allan Horowitz (202) 895-2168  
General Manager Premier US - Matt Collins (425) 703-3658  
US Services VP & GM Coordinator – Brian Boruff (646) 2254484  
CORP VP, MS SERVICES AND IT – Rick Devenuti (425) 706-3366  
GROUP VICE PRESIDENT MSG – Kevin Johnson (800) 882-8080  
CEO Microsoft – Steve Ballmer (800) 882-8080

**Reactive Escalation path:**

Support Professional (800) 882-8080  
Support Professional Technical lead/TAM (800) 882-8080  
Consulting Technical Lead (if two products)/TAM (800) 882-8080  
CPR Engineer (Critical Problem Resolution)/TAM (800) 882-8080  
CPR/Product Group Program Manager (800) 882-8080

## MICROSOFT PREMIER SUPPORT SERVICES

### STATEMENT OF SERVICES

This Microsoft Premier Support Statement of Services is made pursuant to the Los Angeles County Microsoft Master Agreement ("Agreement"), number \_\_\_\_\_, effective on \_\_\_\_\_, by and between the Los Angeles County ("Customer") and Microsoft Corporation ("Microsoft") and is incorporated therein. Capitalized terms not otherwise defined have the meanings provided in the Agreement.

1. Term. The term of this SOS will be twelve (12) months, commencing on \_\_\_\_\_ and expiring on \_\_\_\_\_
2. Services and Fees.

| OPTION SELECTED  | QUANTITY              |
|--|-----------------------|
| <b>PROBLEM RESOLUTION INCIDENTS</b><br>Services shall be as described in Exhibit A1 to the Master Agreement  | _____ Incidents       |
| <b>TECHNICAL ACCOUNT HOURS (INCLUSIVE OF BOTH SUPPORT ACCOUNT MANAGEMENT AND SUPPORT ASSISTANCE)</b><br>Services shall be as described in Exhibit A1 to the Master Agreement | _____ hours           |
| <b>INFORMATION SERVICES</b><br>Unlimited-user access license to Premier Online website<br>Critical Problem Alerts<br>Product NewsFlashes<br>Support Webcasts                 | Included at no charge |
| <b>TECHNET SUBSCRIPTION</b>  |                       |
| <b>MSDN SUBSCRIPTION</b>   |                       |
| <b>TAM ONSITE VISIT</b>  |                       |
| <b>WORKSHOP</b>  |                       |
| <b>APPLICATION DEVELOPMENT CONSULTANT</b>  | _____ hours           |
| <b>ALLIANCE SUPPORT TECHNICIAN</b>   | _____ hours           |
| <b>ROSS ON-SITE VISIT</b>  |                       |
| <b>Total Due From Customer:</b>  |                       |

Effect of Order. All provisions of the Master Agreement shall remain unchanged and in full force and effect.

MICROSOFT CORPORATION

LOS ANGELES COUNTY

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Effective Date

\_\_\_\_\_  
Date

**Purchasing Department**

|                    |
|--------------------|
| Name:              |
| Address:           |
| _____              |
| _____              |
| Phone: (     )     |
| Facsimile: (     ) |

**Technical contacts**

|                    |  |
|--------------------|--|
| <b>CSM Name:</b>   | <b>2<sup>nd</sup> Technical Contact (if applicable):</b> |
| Address:           | Address:   |
| _____              | _____  |
| _____              | _____  |
| _____              | _____  |
| Phone: (     )     | Phone: (     )   |
| Email:             | Email:   |
| Facsimile: (     ) | Facsimile: (     )                                       |

|  |  |
|--|--|
| <b>3<sup>rd</sup> Technical Contact (if applicable):</b> | <b>4<sup>th</sup> Technical Contact (if applicable):</b> |
| Address:   | Address:   |
| _____  | _____  |
| _____  | _____  |
| _____  | _____  |
| Phone: (     )   | Phone: (     )   |
| Email:   | Email:   |
| Facsimile: (     )                                       | Facsimile: (     )                                       |

|  |
|--|
| <b>5<sup>th</sup> Technical Contact (if applicable):</b> |
| Address:   |
| _____  |
| _____  |
| _____  |
| Phone: (     )   |
| Email:   |
| Facsimile: (     )                                       |

## TechNet/MSDN subscriptions

|   |   |
|---|---|
| <input type="checkbox"/> Check here for MSDN or TechNet recipient if included<br><input type="checkbox"/> Check here for DVD format<br><input type="checkbox"/> Check here for CD format (default if neither are checked) | <input type="checkbox"/> Check here for MSDN or TechNet recipient if included<br><input type="checkbox"/> Check here for DVD format<br><input type="checkbox"/> Check here for CD format (default if neither are checked) |
| <b>CSM Name:</b><br>Address:<br>_____<br>_____<br>_____   | <b>Named Contact Name:</b><br>Address:<br>_____<br>_____<br>_____   |
| Phone: (     )  | Phone: (     )  |
| Email:  | Email:  |
| Facsimile: (     )  | Facsimile: (     )  |
| <input type="checkbox"/> Check here for MSDN or TechNet recipient if included<br><input type="checkbox"/> Check here for DVD format<br><input type="checkbox"/> Check here for CD format (default if neither are checked) | <input type="checkbox"/> Check here for MSDN or TechNet recipient if included<br><input type="checkbox"/> Check here for DVD format<br><input type="checkbox"/> Check here for CD format (default if neither are checked) |
| <b>Named Contact Name:</b><br>Address:<br>_____<br>_____<br>_____   | <b>Named Contact Name:</b><br>Address:<br>_____<br>_____<br>_____   |
| Phone: (     )  | Phone: (     )  |
| Email:  | Email:  |
| Facsimile: (     )  | Facsimile: (     )  |

MICROSOFT PERSONNEL  
ACKNOWLEDGMENT AND CONFIDENTIALITY,  
AGREEMENT

AGREEMENT NUMBER \_\_\_\_\_

**General Information.**

MICROSOFT has entered the referenced Agreement with the County of Los Angeles to provide certain services to the County. The County requires your signature on this Acknowledgment and Confidentiality Agreement.

**Acknowledgement.**

I understand and agree that the MICROSOFT is my sole employer or general contractor for purposes of the above-referenced Agreement. I understand and agree that I must rely exclusively upon MICROSOFT for payment of salary and any and all other benefits payable to me or on my behalf by virtue of my performance of work under the above-referenced Agreement.

I understand and agree that I am not an employee of the County for any purpose whatsoever and that I do not have and will not acquire any rights or benefits of any kind from the County by virtue of my performance of work under the above-referenced Agreement. I understand and agree that I do not have and will not acquire any rights or benefits from the County pursuant to any agreement between any person or entity and the County.

**Confidentiality.**

You may be involved with work pertaining to services provided by the County and, if so, you may have access to confidential data, information and materials pertaining to persons and/or entities providing or receiving services from the County. In addition, you may also have access to confidential proprietary data, information and materials which are owned and/or copyrighted by the County, the above-referenced Contractor, or other vendors doing business with the County. The County as well as you have a legal obligation to protect all such confidential data, information and materials in the County's possession.

If you are to be involved in County work, the County must ensure that you, too, will protect the confidentiality of such data, information and materials. Consequently, you must sign this Agreement as a condition of your work to be provided by MICROSOFT for the County. Please read this Agreement and take due time to consider it prior to signing.

I hereby agree that I will not divulge to any unauthorized person any data, information or materials obtained while performing work related to the above-referenced County Contract. I agree to forward all requests for the disclosure or release of any data, information or materials received by me to my immediate supervisor.

I agree to report to my immediate supervisor any and all violations of the above-referenced Agreement or this Agreement by myself and/or by any other person of which I become aware. I agree to return all confidential data, information and materials to my immediate supervisor upon completion of the above-referenced Agreement, or termination of my work relationship with MICROSOFT, whichever occurs first.

I acknowledge that violation of this Agreement will subject me to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

Date:

Name:

(Contractor / Employee's Signature)

Name:

(Print Contractor Employee's Name)

Social Security Number:

Working Title:

In lieu of providing County with this Acknowledgment and Confidentiality Agreement executed by each of its personnel as required by Section 23.2 and 7.1 of this Master Services Agreement, Microsoft may provide such Acknowledgment on behalf of such personnel, and in that event Microsoft shall indemnify, defend, and hold harmless the County from any and all liability arising from any unauthorized disclosure of Confidential Statutory Information by any Microsoft employee, agent, or subcontractor, whether within the course and scope of employment or otherwise, and with or without cause and Microsoft shall take all reasonable steps to prevent such personnel from continuing to disclose such Confidential Statutory Information. In such event Microsoft represents and warrants that it has informed its personnel of the requirements of this Acknowledgment and Confidentiality Agreement, and that it is authorized to execute this Acknowledgment and Confidentiality Agreement on behalf of each such person.

By

\_\_\_\_\_  
Microsoft



Invoice

# Exhibit A8 - PSS Sample INVOICE

| Remit To Information            |                                |
|---------------------------------|--------------------------------|
| Mail to:                        | Express Mail to:               |
| Microsoft Corporation           | Microsoft Corporation LB844510 |
| PO Box 844510                   | 1401 Elm St                    |
| Dallas, TX 75284-4510           | 5th Fl                         |
|                                 | Dallas, TX 75202               |
| Wire Transfer to:               |                                |
| ABA#11100001-2 Acct# 3750825354 | Tax ID# 91-1144442             |
| Bank of America, Dallas, TX     |                                |

Billing Contact Phone:  
Billing Contact Email:

| Invoice Information                  |                       |
|--------------------------------------|-----------------------|
| Invoice No:                          | Contract No:          |
| Customer PO No:                      | Agreement Start Date: |
| Order Number:                        | Agreement End Date:   |
| Invoice Date:                        | Support Period Start: |
| Payment due Date:                    | Support Period End:   |
| Due Net 30 days from date of invoice |                       |
| Customer Region Code:                | STATELOCAL            |

| Customer Billing Information |
|------------------------------|
|                              |

| Customer Delivery Site |
|------------------------|
|                        |

| Invoice Contact                                       |
|---|
| Questions regarding payment of this invoice? Contact: |
| Mike Buckley  |
| NA Credit Services                                    |
| Phone: (425) 704-4212                                 |
| Fax: (425) 936-7329                                   |
| E-mail: mbuck@microsoft.com                           |

| Item No | Service Number | Service Description                | Qty | Unit Price | Extended Price |
|---------|----------------|------------------------------------|-----|------------|----------------|
|         |                | Microsoft Premier Support Services | 1   |            |                |

| Invoice Comments: |
|-------------------|
|                   |
| Sub Total:        |
| Total Sale        |
| USD               |
| \$0.00            |

We hereby certify that the information on this invoice is true and correct.

For faster and more accurate processing, please reference your invoice number when remitting payment.

Microsoft Corporation

Total Amount \$0.00

Payable in USD



**PSS Change Order Form**

**Change Request**

County MSA#:

\_\_\_\_\_

SOS# (Premier Service  
Description Contract #):

\_\_\_\_\_

LA County Agency

\_\_\_\_\_

Change Requested By:

\_\_\_\_\_

**Description of Requested Change:**

\_\_\_\_\_  
**Need/Justification for Requested Change:**

\_\_\_\_\_  
**Impact Assessment**

**Does Change Have an Associated Fee?**

☐ No

☐ Yes, Fee Amount: \_\_\_\_\_

MICROSOFT CORPORATION

LOS ANGELES COUNTY

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Effective Date

\_\_\_\_\_  
Date

**EXHIBIT B1**  
**SERVICES DESCRIPTION**



---

**Microsoft Consulting Service**

Microsoft Consulting Services (MCS) was established in 1990 as a worldwide division with Microsoft, with the mission to assist major corporations and governments architect, plan, deploy, and implement Microsoft technology as a means to attain their strategic goals. The mission of Microsoft Consulting Services is to provide knowledge transfer of our capabilities in Microsoft technology, methodologies, tools, training, and experience, to empower enterprise customers, Microsoft Solution Providers and Integrators to be successful with our products.

Microsoft is a product company, and our consulting services have evolved from a demand from our enterprise clients for highly skilled and trained technicians to support the development of client-server applications. MCS focuses on keeping our consultants the most highly trained and qualified in the industry, and training our Solution Provider partners in our latest technologies. There are many services offered by MCS, and in general they are categorized into five areas:

**Infrastructure and Networking**

In this area, many of our clients realize that products such as Microsoft Windows 2000 Server, Microsoft Systems Management Server, Microsoft Exchange Server, Microsoft SNA Server, and Microsoft SQL Server (the Back Office set of products) are complex and require architecture and planning prior to deployment. In that, MCS provides architectural and planning assistance to determine the target environment and develop test laboratories and deployment plans so that many of our customers have a picture of what the "end product" will be prior to training staff and deploying the products.

**Intranet and Internet**

The emergence of internet/intranet products, tools, and technologies, is rapidly changing the way IT organizations, and the customers they serve approach information technology. MCS provides knowledge transfer, guidance and assistance to customers in developing intranet/internet strategies, prototyping, implementation and deployment of solutions spanning across infrastructure and application area's.

**Messaging Engineering**

Electronic mail is no longer a luxury, but a corporate and government standard. Developing a messaging architecture goes beyond e-mail. Many organizations realize that the next generation of electronic messaging is founded in an enterprise capable messaging architecture and system. We provide assistance to our clients in planning for and migrating to Microsoft Exchange.

**Software Development and Engineering**

MCS provides service in this area from architecting a solution, through solution design to software construction and implementation. One very popular area of focus with our clients is the Microsoft Solution Framework, Microsoft's very own discipline for developing software.

**Enterprise Program Management**

The Enterprise Program Management service is an onsite relationship for planning effective architectures and identifying ways that Microsoft technology can provide a competitive advantage. This long-term (one-year renewable) service provides a senior-level enterprise-experienced consultant who coordinates and delivers a customized suite of Microsoft-platform activities, including strategic IT planning, total cost of ownership recommendations, IT organization improvement, and more.

**EXHIBIT B1**  
**SERVICES DESCRIPTION**



---

**Microsoft Solutions Framework**

The Microsoft Solutions Framework (MSF) is a collection of models, principles, and practices that helps organizations be more effective in their creation and use of technology to solve their business problems. Created from the combined experience of our product developers, consultants, and service partners worldwide, MSF courses provide rigorous guidance that is flexible enough to be adapted to meet the needs of the project and the organization. The core building blocks for this MSF-based solutions guidance are the six major MSF models: the Enterprise Architecture Model, the Team Model, the Process Model, the Risk Management Model, the Design Process Model and the Application Model.

**Microsoft Labor Category Descriptions**

***Engagement Manager (Quality Assurance & Management Review)***

- Coordinate development and delivery of MCS proposals and project deliverables in response to customer tasking requirements
- Work with customer and project team to develop and gain consensus on Vision Scope
- Direct the activities of Principal Consultants, Senior Consultants, Consultants, Associate Consultants, and Sub-Contractors
- Makes project scheduling decisions
- Participate in project staffing decisions
- Participate in strategic planning sessions with MCS Technical Project Manager and customer staff
- Provide key personal link to Senior Executive Microsoft staff including feedback of customer issues
- Provide quality assurance review of engagement processes and deliverables

General Experience: Five to fifteen years demonstrated performance in related technology and business management. Experienced in business development and managing projects involving such complex networks, cross-platform integration and large-scale, complex systems design and implementation. This individual will have been formally trained by Microsoft in one or more of the following areas: Microsoft Solutions Framework, product futures, and relevant Certified Training in infrastructure and/or development areas associated with Microsoft's products.

Functional Responsibilities: Lead Microsoft business contact for customers, and also coordinates and schedules project resources to ensure development or analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

Education: Bachelor's or Masters degree or industry equivalent experience.

***Architectural Consultant (Quality Assurance)***

- Work with customer and project team to develop and gain consensus on Vision Scope
- Contribute to review of customer tasks and development of MCS strategic approaches
- Direct the activities of Principal Consultants, Senior Consultants, Consultants, Associate Consultants, and Sub-Contractors
- Lead role in delivering technical presentations to customer
- Participate in delivering technical presentations to customer staff

**EXHIBIT B1**  
**SERVICES DESCRIPTION**



- Participate in design review of information systems
- Participate in project staffing decisions
- Participate in strategic planning sessions with MCS Technical Project Manager and customer staff
- Perform REJ and TCO Analysis
- Provide key personal link to Microsoft technology groups
- Provide quality assurance review of engagement process and deliverables

General Experience: Five to twenty years demonstrated performance in related technology. Experienced in topics such as complex networks, messaging, cross-platform integration and large-scale, complex systems and applications design and implementation. This individual will have been formally trained by Microsoft in one or more of the following areas: Microsoft Solutions Framework, product futures, and relevant Certified Training in infrastructure and/or development areas associated with Microsoft's products.

Functional Responsibilities: Works closely with Project manager as the Microsoft Advocate and sole or shared Technical lead to ensure development or analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

Education: Bachelor's or Masters degree or industry equivalent experience.

***Principal Consultant (Quality Assurance)***

- Contribute to review of customer tasks and development of MCS strategic approaches
- Direct the activities of other Senior Consultants, Consultants and Associate Consultants
- Lead role in delivering technical presentations to customer
- Meet/interview customer to capture specific requirements in concise format
- Participate in delivering technical presentations to customer staff
- Participate in design of information systems
- Participate in project staffing decisions
- Participate in strategic planning sessions with MCS Technical Project Manager and customer staff
- Perform Rapid Economic Justification (REJ) and Total Cost of Ownership (TCO) Analysis
- Provide key personal link to Microsoft technology groups
- Provide quality assurance review of engagement process and deliverables

General Experience: Five to fifteen years demonstrated performance in related technology. Experienced in topics such as complex networks, messaging, cross-platform integration and large-scale, complex systems and applications design and implementation. This individual will have been formally trained by Microsoft in one or more of the following areas: Microsoft Solutions Framework, product futures, and relevant Certified Training in infrastructure and/or development areas associated with Microsoft's products.

Functional Responsibilities: Works closely with Project manager as the Microsoft Advocate and sole or shared Technical lead to ensure development or analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

Education: Bachelor's or Masters degree or industry equivalent experience.

**EXHIBIT B1**  
**SERVICES DESCRIPTION**



***Senior Consultant (Technical Project Manager)***

- Analyze technical requirements and develop effective technical solutions
- Direct the activities of other Senior Consultants, Consultants and Associate Consultants
- Lead role in conceiving architectural designs
- Lead role in current environment assessment
- Lead role in delivering technical presentations to customer
- Manage specific tasks including directing the efforts of selected MCS and customer staff
- Meet/interview customer to capture specific requirements in concise format
- Participate in design of information systems
- Perform in the role of Enterprise or Partner Strategy Consultant
- Perform Rapid Economic Justification (REJ) and Total Cost of Ownership (TCO) Analysis
- Provide key personal link to Microsoft technology groups
- Provide leadership and guidance to support the implementation of large systems including methodology, design approaches, and architectural and engineering considerations
- Provide quality assurance review of engagement processes and deliverables
- Serve as Technical Project Manager
- Work with customer staff to implement customer technology (e.g., testing, documentation, meeting user expectations).

General Experience: Five to fifteen years demonstrated performance in related technology. Experienced in topics such as complex networks, messaging, cross-platform integration and large-scale, complex systems design and implementation. This individual will have been formally trained by Microsoft in one or more of the following areas: Microsoft Solutions Framework, product futures, and relevant Certified Training in infrastructure and/or development areas associated with Microsoft's products.

Functional Responsibilities: Lead Microsoft Advocate and Technical lead to ensure development or analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

Education: Bachelor's or Masters degree or industry equivalent experience.

***Consultant (Lead Project Support)***

- Analyze technical requirements and develop effective technical solutions
- Assist in conceiving architectural designs
- Assist in delivering technical presentations to customer staff
- Assist in the implementation of large systems including methodology, design approaches, and architectural and engineering considerations.
- Design and write code as required for selected customer systems
- Develop documentation on selected customer systems and objectives
- Meet/interview customer to capture specific requirements in concise format
- Perform in the role of Enterprise or Partner Strategy Consultant
- Provide key personal link to Microsoft technology groups
- Serve as Technical Project Lead

**EXHIBIT B1**  
**SERVICES DESCRIPTION**



- Work with customer staff to implement customer technology (e.g., testing, documentation, meeting user expectations).
- Work with customer staff to support technical strategy and control objectives

General Experience: Five plus years demonstrated performance in related technology. Experienced in topics such as complex networks, messaging, cross-platform integration and large-scale, complex systems design and implementation. Microsoft will have formally trained this individual in one or more of the following areas: Microsoft Solutions Framework, product futures, and relevant Certified Training associated with Microsoft's products.

Functional Responsibilities: Works closely with Project manager as the Microsoft Advocate and sole or shared Technical lead to ensure development or analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

Education: Bachelor's degree or industry equivalent experience.

***Associate Consultant (Project Support)***

- Assist in delivering technical presentations to customer staff
- Design and write code as required for selected customer systems
- Develop documentation on selected customer systems and objectives
- Directly involved in the hands-on implementation of customer systems
- Provide Technical Writing and Documentation support
- Work with customer staff personnel to support technical strategy and control objectives

General Experience: One to five years demonstrated performance or internship in related technology. Experienced in topic such complex networks, cross-platform integration and large-scale, complex systems design and implementation. Microsoft will have formally trained this individual in product futures, and relevant Certified Training associated with Microsoft's products.

Functional Responsibilities: Works to support the Microsoft Project manager to ensure development, analysis or deployment remains on schedule and in line with the current capabilities and future directions of Microsoft products.

Education: Bachelor's degree or industry equivalent experience.

***Strategy Consultant***

- Understands highly complex customer consulting requirements for multiple customers and leads the development of strategies/plans that can be leveraged across accounts.
- Is a key contributor to EKM and to the development of strategic initiatives.
- Drives service readiness for some products for the practice.

***Project Manager***

- Deliver a product/service/solution within constraints (schedule, features/functionality, and budget)

**EXHIBIT B1**  
**SERVICES DESCRIPTION**



- 
- Ensure quality execution in the delivery of a product/service/solution to drive satisfaction, loyalty, and the Customer Partner Experience
  - Maintain professional certification by the PMI and to mentor others to build capabilities and improve the organizational health and maturity

***Practice Manager***

- Cultivate services leaders by developing skills and capabilities in engagement managers
- Increase Operational Excellence to Achieve Budgeted Revenue and Utilizations Targets.
- Accountable for accuracy in Systems & Process Execution.
- Drive Customer and Partner Satisfaction.
- Drive New Product Adoption and Deployment: Penetrate account base with on-strategy services to support software adoption.

***General Manager***

- Coordinate resources to optimize productivity of staff in accordance with business plan.
- Create and monitor annual MCS field objectives to ensure alignment with Microsoft's corporate objectives.
- Complete administrative activities regarding the operational aspects of the business.
- Develop MCS's annual business plan in accordance with Microsoft's business strategy.
- Develop operational infrastructure to successfully conduct MCS business.
- Execute practice investment hours strategy.
- Contribute to a practice's financial objective.



# **Microsoft** **Services**

**Hourly rate for Warranty Claim Investigative Services referenced under  
Section 16.2 MCS Fixed Price Services Warranty:**

**MCS SENIOR CONSULTANT**

**\$245.00 per hour\***

\* Microsoft will charge a not-to-exceed 5% escalation fee year-over-year for subsequent fiscal years commencing July 1<sup>st</sup>, or Microsoft's then current Public Sector Published rate for Senior Consultant, whichever is less.

**MCS SOS ISSUANCE PROCESS**

A. To initiate the MCS SOS Issuance Process, County department(s) shall prepare and submit to the County's Program Manager a proposed Statement of Services which shall include the following: identification of its need in functional terms, and describing specific services, tasks and deliverables, as accurately as possible.

B. The proposed SOS shall include as much information as can be provided by the Department(s) based on the information listed below (SOS Specifics). When the County Project Director, for the proposed SOS believes that the SOS contains an accurate description of the services required by the Department(s), the County Project Director shall submit the proposed SOS to County's Program Manager for review and approval. County's Program Manager shall verify the Department's need and that the Department has sufficient funding for the scope of the proposed project.

C. When County's Program Manager has reviewed the proposed SOS, the Program Manager shall then submit the proposed SOS to Microsoft to develop a final SOS to complete the tasks and deliverables identified and the cost per deliverable. County's Project Director, or his / her delegate shall be responsible for answering Microsoft's questions regarding the proposed SOS.

D. Microsoft shall be required to schedule all meetings necessary to make sure that Microsoft fully understands the Department's needs, including one or more sessions, if necessary, before preparing the final SOS. Microsoft should forward the final SOS to the applicable County Project Director and the County's Program Director for review.

E. Upon receipt of Microsoft's final SOS, County's Program Manager shall review the SOS and shall confer with the County's Project Director and others, including Microsoft, as necessary, to assure that the SOS meets the requirements of the Department and the cost is supportable within the department's budget.

F. In order to meet the Department(s)' requirements, the SOS must include the tasks, deliverables and the cost per applicable deliverable, to meet the Department(s)' requirements. All MCS Services described in the SOS shall strictly conform to the applicable Services set forth in Exhibit B ("**Microsoft Consulting Services Description**"). Each MCS SOS shall be performed on a fixed price per Deliverable basis. Microsoft shall state the firm, fixed price for each deliverable.

G. The department and Microsoft shall meet and confer to develop Microsoft's final SOS. Microsoft shall be responsible for arranging all meetings that are necessary at no cost to County. Using Exhibit B7 (MCS Sample Statement of Services), the parties shall continue to

meet until the following minimal elements of the project have been defined in the proposed SOS:

- (1) County Project Manager (Name, Title, Business Address, Contact Information);
- (2) Microsoft Project Manager (Name, Title, Business Address, Contact Information and confidentiality Agreement)
- (3) Microsoft Personnel Assigned to Project (Name, Title, Business Address, Contact Information, Resume, and Confidentiality Agreement);
- (4) Start and end Dates for the Project (attach a copy of the project time line);
- (5) The Project Statement of Work, including but not limited to:
  - (a) Concise description of the need for the services (the problem or issue).
  - (b) Detailed Project plan which states the specifics (detailed application/system design documentation) of how the MCS will meet the need that the department has identified.
  - (c) Cost documentation.
  - (d) A detailed Project time line for the project.
  - (e) The Acceptance Test Plan and Acceptance Criteria (broken down by the technical specification for each functional requirement County has identified, wherever possible).

H. County's Program Manager shall confirm that the Department has adequate funding for the proposed SOS Total Maximum Amount.

I. Once County's Program Manager has approved the SOS as complete and verified that the Department has adequate funds for the project, the Program Manager shall send the SOS to the County Program Director who shall have final approval of the Statement of Work, Project Plan, price, and other elements of each SOS. For each MCS SOS with a Maximum Sum \$100,000 or less, when County's Program Director approves the SOS, the County Program Director shall execute the SOS on behalf of the County and issue it to Microsoft's Contract Manager for implementation by Microsoft. For each MCS SOS with a Maximum Sum of more than \$100,000, County's Program Director shall approve the SOS, and the Board of Supervisors shall execute the SOS on behalf of the County and issue it to Microsoft's Contract Manager for implementation by Microsoft.

J. Microsoft shall not be authorized to provide Services on any MCS SOS unless and until it receives an approved SOS executed by County's Program Director for SOSs of \$100,000 or less or by the Board of Supervisors for SOSs over \$100,000.

K. Microsoft shall invoice County according to the payment milestones the parties establish in the approved SOS.

L. Microsoft may invoice County for deliverables which County has accepted as specified herein and in Section 12 ("**Invoices and Payment**") of the body of the Master Services Agreement. Microsoft shall not be authorized to issue an invoice for payment of any

Services Microsoft performs under an MCS SOS unless and until County accepts and approves Microsoft's Services by issuing Microsoft an Acceptance Certificate in accordance with Section 28 ("**Work approval, Testing and Acceptance**") of the body of this Master Agreement. If not so approved in writing, no payment shall be due to Microsoft for those Services.

**MICROSOFT CONSULTING SERVICES  
SERVICE ACCEPTANCE CERTIFICATE**  
Agreement # \_\_\_\_\_

|   |  |                      |              |
|---|--|----------------------|--------------|
| <b>Department Name:</b>   |  |                      |              |
| <b>Microsoft Consulting Services – Project Name:</b>            |  | <b>SOS #:</b>        |              |
| <b>Engagement Description</b>                                   |  |                      |              |
|   |  |                      |              |
| <b>MCS Project Manager:</b>                                     |  | <b>Cost:</b>         |              |
| <b>Engagement Status</b>  |  |                      | <b>Date:</b> |
|   |  |                      |              |
| <b>Microsoft Consulting Services Attestation Of Completion:</b> |  |                      |              |
| _____<br><b>MCS Project Manager (Signature)</b>                 |  | _____<br><b>Date</b> |              |
| <b>Certification Of Acceptable Completion Of Work</b>           |  |                      |              |
| <b>County Project Manager Certification</b>                     |  | <b>Date:</b>         |              |
| <b>Print Name:</b>  |  | <b>Signature:</b>    |              |
| <b>Email:</b>   |  | <b>Phone #:</b>      |              |
| <b>County Project Manager Comments:</b>                         |  |                      |              |

10/20/03

COPY MICROSOFT MASTER SERVICES AGREEMENT COUNTY PROGRAM MANAGER, CIO OFFICE

**EXHIBIT B5**  
**REPORTING FORM**

Microsoft  
**Consulting  
Services**

|                |                      |                        |  |
|----------------|----------------------|------------------------|--|
| From:          |                      | County/MSA #:          |  |
| To:            |                      | SoS #:                 |  |
| Cc:            |                      | Project Code/Name:     |  |
| Date:          | Xx/xx/xx             | MCS Engagement Manager |  |
| Status Period: | Week ending xx/xx/xx |                        |  |

**1. Tasks and deliverables completed this period**

|  |
|--|
| Status Period Overview and Updated Milestone Chart |
|  |

|   |
|---|
| Accomplishments for this Status Period  |
| Tasks and deliverables scheduled for the reporting period which were completed: |
| Issues Resolved/Milestones Past:  |

**2. Tasks and deliverables scheduled for the reporting period which were not completed**

|                        |
|------------------------|
| Tasks and deliverables |
|                        |

**3. Tasks and deliverables scheduled for the next reporting period**

|                        |
|------------------------|
| Tasks and deliverables |
|                        |

**EXHIBIT B5**  
**REPORTING FORM**



---

**4. Risks and Issues**

| Issues and Difficulties that need to be resolved |
|--|
| Statement  |
| Impact   |
| Mitigation                                       |
| Status   |
| Action plan                                      |

---

**5. Expenditures to Date**

| Expenditures                                 |
|--|
| Total Amount Paid to MCS under SoS # to Date |

**MCS Escalation List**

**Management Escalation Path**

Contracts Specialist – Noel Mamplata (954) 492-5223  
Engagement Manager - Michael Newman (714) 401-3863  
Contracts Manager – David Gallagher (202) 243-6702  
Consulting Practice Manager – Nate Harris (678) 772-7222  
General Manager Public Sector Services – Allan Horowitz (202) 895-2168  
US Services VP & GM Coordinator – Brian Boruff (646) 2254484  
CORP VP, MS SERVICES AND IT – Rick Devenuti (425) 706-3366  
GROUP VICE PRESIDENT MSG – Kevin Johnson (800) 882-8080  
CEO Microsoft – Steve Ballmer (800) 882-8080



**EXHIBIT B7**  
**FIXED PRICE STATEMENT OF SERVICES**

**Microsoft**  
**Consulting**  
**Services**

|  |                                 |
|--|---------------------------------|
| (For Microsoft Internal Purposes Only) | Statement of Services Number:   |
|  | Project Code:                   |
|  | Client ID:                      |
|  | Client Type:                    |
|  | Vertical Industry:              |
|  | Customer Purchase Order Number: |

This Statement of Services [SOS] is made pursuant to the Master Services Agreement (the "agreement") Number \_\_\_\_\_ effective as of \_\_\_\_\_, by and between Los Angeles County ("County") and Microsoft. This SOS is incorporated into the terms and conditions of the Master Services Agreement

|   |  |       |
|---|--|-------|
| <b>Customer Invoice Information</b>   |  |       |
| Name of Customer  | A/P Contact Name County's Project Director and County's Project Manager. |       |
| Street Address  | Contact E-mail Address   |       |
| City  | State/Province   | Phone |
| Country   | Postal Code  | Fax   |
| <b>Invoicing</b>  |  |       |
| Microsoft will invoice County upon receipt of an executed Acceptance Certificate from County for services performed. Microsoft's fees shall include any sales taxes, duties, tariffs, levies or other governmental charges or expenses (including, without limitation, any value added taxes) to which such fees may be subject. All services are fully burdened. No additional costs shall be invoiced. Microsoft invoices for payment will be directed to County's Project director for this SOS and to County's Project Manager. |  |       |
| <b>Period of Performance</b>  |  |       |
| Services under this statement of services will commence on _____. This statement of services will expire when all services have been satisfactorily completed.  |  |       |
| <b>Payments to Microsoft should be made to the following, include reference to invoice number:</b><br><b>By Check: Microsoft Enterprise Services, P.O. Box 844510, Dallas, TX 75284-4510</b><br><b>By Wire: Microsoft Enterprise Services #844510, Acct 3100000/ ABA#110000100, Nations Bank of Texas, N.A.</b>   |  |       |
| <input checked="" type="checkbox"/> Attachments required with Invoice (signed Acceptance Certificate from County):  |  |       |

*Place of Performance/Project Point of Contact(Customer Satisfaction Contact)*

|                   |   |       |
|-------------------|---|-------|
| County Department | County Departments Project Director for this SOS: |       |
|                   | County Project Manager                            |       |
| Street Address    | Contact<br>E-mail<br>Address                      |       |
| City              | State/Province                                    | Phone |
| Country           | Postal Code                                       | Fax   |

| <i>Customer</i>  | <i>Microsoft Affiliate</i>             |
|--|--|
| County Program Director  | Name<br><b>Microsoft Corporation</b>   |
| Signature  | Signature                              |
| Jon Fullinwider  | Name of person signing (please print)  |
| County of Los Angeles, Chief Information officer<br>Program Director | Title of person signing (please print) |
| Signature date   | Signature date                         |

**EXHIBIT B7**  
**FIXED PRICE STATEMENT OF SERVICES**



1. **Scope of services.** The services Microsoft will perform for County in connection with its [insert customer project name here] (the "project") are set forth in Exhibit 1 Statement of Work – Tasks and Deliverables attached to this SOS. The acceptance process that applies to the services is set forth in Exhibit 2 Acceptance Test to this SOS.
2. **Fees Schedule.** The total fixed price fee and schedule of payments for all services accepted hereunder is set forth in Exhibit 3 to this SOS.

Microsoft invoices for payment will be directed to County's representative for payment at the address shown below (please provide):

County's Departmental Project Director  
County's Project Manager

Mailstop (if any):

Address:

Telephone:

City:

Fax:

State:

Zip:

Email:

3. **Commencement date.** Services under this statement of services will begin on

MICROSOFT PERSONNEL  
ACKNOWLEDGMENT AND CONFIDENTIALITY,  
AGREEMENT

AGREEMENT NUMBER \_\_\_\_\_

**General Information.**

MICROSOFT has entered the referenced Agreement with the County of Los Angeles to provide certain services to the County. The County requires your signature on this Acknowledgment and Confidentiality Agreement.

**Acknowledgement.**

I understand and agree that the MICROSOFT is my sole employer or general contractor for purposes of the above-referenced Agreement. I understand and agree that I must rely exclusively upon MICROSOFT for payment of salary and any and all other benefits payable to me or on my behalf by virtue of my performance of work under the above-referenced Agreement.

I understand and agree that I am not an employee of the County for any purpose whatsoever and that I do not have and will not acquire any rights or benefits of any kind from the County by virtue of my performance of work under the above-referenced Agreement. I understand and agree that I do not have and will not acquire any rights or benefits from the County pursuant to any agreement between any person or entity and the County.

**Confidentiality.**

You may be involved with work pertaining to services provided by the County and, if so, you may have access to confidential data, information and materials pertaining to persons and/or entities providing or receiving services from the County. In addition, you may also have access to confidential proprietary data, information and materials which are owned and/or copyrighted by the County, the above-referenced Contractor, or other vendors doing business with the County. The County as well as you have a legal obligation to protect all such confidential data, information and materials in the County's possession.

If you are to be involved in County work, the County must ensure that you, too, will protect the confidentiality of such data, information and materials. Consequently, you must sign this Agreement as a condition of your work to be provided by MICROSOFT for the County. Please read this Agreement and take due time to consider it prior to signing.

I hereby agree that I will not divulge to any unauthorized person any data, information or materials obtained while performing work related to the above-referenced County Contract. I agree to forward all requests for the disclosure or release of any data, information or materials received by me to my immediate supervisor.

I agree to report to my immediate supervisor any and all violations of the above-referenced Agreement or this Agreement by myself and/or by any other person of which I become aware. I agree to return all confidential data, information and materials to my immediate supervisor upon completion of the above-referenced Agreement, or termination of my work relationship with MICROSOFT, whichever occurs first.

I acknowledge that violation of this Agreement will subject me to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

Date:

Name:

(Contractor / Employee's Signature)

Name:

(Print Contractor Employee's Name)

Social Security Number:

Working Title:

In lieu of providing County with this Acknowledgment and Confidentiality Agreement executed by each of its personnel as required by Section 23.2 and 7.1 of this Master Services Agreement, Microsoft may provide such Acknowledgment on behalf of such personnel, and in that event Microsoft shall indemnify, defend, and hold harmless the County from any and all liability arising from any unauthorized disclosure of Confidential Statutory Information by any Microsoft employee, agent, or subcontractor, whether within the course and scope of employment or otherwise, and with or without cause and Microsoft shall take all reasonable steps to prevent such personnel from continuing to disclose such Confidential Statutory Information. In such event Microsoft represents and warrants that it has informed its personnel of the requirements of this Acknowledgment and Confidentiality Agreement, and that it is authorized to execute this Acknowledgment and Confidentiality Agreement on behalf of each such person.

By

\_\_\_\_\_  
Microsoft

**EXHIBIT B8**  
**SAMPLE INVOICE**

Microsoft  
**Consulting  
Services**

**Microsoft**

PHONE 425-882-8080

FAX 425-93-MSFAX

Remit To:

US

Microsoft Corporation

Microsoft Enterprise Services

P.O. Box 844510

Dallas, TX 75284-4510

Wire To:

Bank of America

Acct# 3750825354

aba# 11100001-2

ACCOUNT

Invoice No: Draft-000-000

**Required: attach signed  
Acceptance Certificate  
before submitting Invoice**

PO: PO# HERE

Invoice Date: <Day>, <Date>, 2004

Terms: Due Net, 30 days from Invoice Date

Federal ID # 91-1144442

**ENGAGEMENT CODE.** This invoice is for services rendered from <Date> to <Date>. For billing inquiries, please contact Angela Westergaard at 949.475.3226 or by emailing [angweste@microsoft.com](mailto:angweste@microsoft.com). Thank you.

|                    |  |
|--------------------|--|
| County MSA#:       |  |
| SoS #:             |  |
| SoS Total Amount:  |  |
| Project Code/Name: |  |

|   |
|---|
| <b>Fixed Price Service Deliverable Description:</b> |
|   |
| <b>Total:</b>                                       |

|   |
|---|
| <b>Fixed Price Service Deliverable Description:</b> |
|   |
| <b>Total:</b>                                       |

|  |  |
|--|--|
| <b>Total Amount of Invoice:</b>                      |  |
| <b>Total remaining on SoS after current charges:</b> |  |

**MCS Change Order Form**

**Change Request**

County MSA#: \_\_\_\_\_

SOS #: \_\_\_\_\_

LA County Agency & \_\_\_\_\_

Project Name \_\_\_\_\_

Change Requested By: \_\_\_\_\_

**Description of Requested Change** (including specific changes to project scope, services deliverables, schedule, etc. ,as applicable):

**Need/Justification for Requested Change:**

**Impact Assessment**

Estimated Start Date for Change: \_\_\_\_\_

Estimated Completion Date for Change: \_\_\_\_\_

**Will Change Impact Project Schedule?**

☐ No ☐ Yes, New Estimated Completion Date: \_\_\_\_\_

**Will Change Impact Fee Amount?**

☐ No ☐ Yes, Fee Increase: \_\_\_\_\_ ☐ Yes, Fee Expenses Decrease: \_\_\_\_\_

**MICROSOFT CORPORATION**

**LOS ANGELES COUNTY**

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Effective Date

\_\_\_\_\_  
Date

**MICROSOFT PERSONNEL  
ACKNOWLEDGMENT AND CONFIDENTIALITY,  
AGREEMENT**

AGREEMENT NUMBER \_\_\_\_\_

**General Information.**

MICROSOFT has entered the referenced Agreement with the County of Los Angeles to provide certain services to the County. The County requires your signature on this Acknowledgment and Confidentiality Agreement.

**Acknowledgement.**

I understand and agree that the MICROSOFT is my sole employer or general contractor for purposes of the above-referenced Agreement. I understand and agree that I must rely exclusively upon MICROSOFT for payment of salary and any and all other benefits payable to me or on my behalf by virtue of my performance of work under the above-referenced Agreement.

I understand and agree that I am not an employee of the County for any purpose whatsoever and that I do not have and will not acquire any rights or benefits of any kind from the County by virtue of my performance of work under the above-referenced Agreement. I understand and agree that I do not have and will not acquire any rights or benefits from the County pursuant to any agreement between any person or entity and the County.

**Confidentiality.**

You may be involved with work pertaining to services provided by the County and, if so, you may have access to confidential data, information and materials pertaining to persons and/or entities providing or receiving services from the County. In addition, you may also have access to confidential proprietary data, information and materials which are owned and/or copyrighted by the County, the above-referenced Contractor, or other vendors doing business with the County. The County as well as you have a legal obligation to protect all such confidential data, information and materials in the County's possession.

If you are to be involved in County work, the County must ensure that you, too, will protect the confidentiality of such data, information and materials. Consequently, you must sign this Agreement as a condition of your work to be provided by MICROSOFT for the County. Please read this Agreement and take due time to consider it prior to signing.

I hereby agree that I will not divulge to any unauthorized person any data, information or materials obtained while performing work related to the above-referenced County Contract. I agree to forward all requests for the disclosure or release of any data, information or materials received by me to my immediate supervisor.

I agree to report to my immediate supervisor any and all violations of the above-referenced Agreement or this Agreement by myself and/or by any other person of which I become aware. I agree to return all confidential data, information and materials to my immediate supervisor upon completion of the above-referenced Agreement, or termination of my work relationship with MICROSOFT, whichever occurs first.

I acknowledge that violation of this Agreement will subject me to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

Date:

Name:

(Contractor / Employee's Signature)

Name:

(Print Contractor Employee's Name)

Social Security Number:

Working Title:

In lieu of providing County with this Acknowledgment and Confidentiality Agreement executed by each of its personnel as required by Section 23.2 and 7.1 of this Master Services Agreement, Microsoft may provide such Acknowledgment on behalf of such personnel, and in that event Microsoft shall indemnify, defend, and hold harmless the County from any and all liability arising from any unauthorized disclosure of Confidential Statutory Information by any Microsoft employee, agent, or subcontractor, whether within the course and scope of employment or otherwise, and with or without cause and Microsoft shall take all reasonable steps to prevent such personnel from continuing to disclose such Confidential Statutory Information. In such event Microsoft represents and warrants that it has informed its personnel of the requirements of this Acknowledgment and Confidentiality Agreement, and that it is authorized to execute this Acknowledgment and Confidentiality Agreement on behalf of each such person.

By

*David T. Gallagher*

Microsoft

*David T. Gallagher 2-16-05*



**EQUAL EMPLOYMENT OPPORTUNITY  
(EEO)  
CERTIFICATION**

MICROSOFT Corporation  
Company Name

5335 Wisconsin Ave, NW, Ste #600, Washington, D.C. 20015  
Address

91-1144442  
Internal Revenue Service Employer Identification Number

**GENERAL**

In accordance with provisions of the County Code of the County of Los Angeles, the CONSULTANT certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, religion, ancestry, national origin, or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

| CERTIFICATION   | YES   | NO  |
|---|-------|-----|
| 1. CONSULTANT has written policy statement prohibiting discrimination in all phases of employment.  | ( X ) | ( ) |
| 2. CONSULTANT periodically conducts a self-analysis or utilization analysis of its work force.  | ( X ) | ( ) |
| 3. CONSULTANT has a system for determining if its employment Practices are discriminatory against protected groups.   | ( X ) | ( ) |
| 4. When problem areas are identified in employment practices, CONSULTANT has a system for taking reasonable corrective action to include establishment of goal and/or timetables. | ( X ) | ( ) |

David T. Gallagher  
Signature

2-16-05  
Date

DAVID T. GALLAGHER, Contracts Manager  
Name and Title of Signer (please print)

**BUSINESS ASSOCIATE  
PROTECTED HEALTH INFORMATION DISCLOSURE AGREEMENT**

**MICROSOFT, Business Associate**

This Business Associate Protected Health Information Disclosure Agreement ("Agreement") is entered into effective this \_\_\_\_ day of \_\_\_\_\_, 200\_ ("Effective Date"), by and between Los Angeles County ("Covered Entity"), and Microsoft, a Washington Corporation ("Business Associate").

**RECITALS**

WHEREAS, the parties have executed an agreement whereby Business Associate provides services to Covered Entity, and Business Associate receives, has access to or creates Protected Health Information in order to provide those services ("Master Services Agreement");

WHEREAS, Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Parts 160 and 164 ("Privacy Regulations");

WHEREAS, the Privacy Regulations require Covered Entity to enter into a contract with Business Associate in order to mandate certain protections for the privacy and security of Protected Health Information, and those Regulations prohibit the disclosure to or use of Protected Health Information by Business Associate if such a contract is not in place;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

**DEFINITIONS**

1.1 "Disclose" and "Disclosure" mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate's internal operations or to other than its employees.

1.2 "Individual" means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.3 “Protected Health Information” has the same meaning as the term “protected health information” in 45 C.F.R. § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity. Protected Health Information includes information that (i) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual; (ii) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is received by Business Associate from or on behalf of Covered Entity, or is created by Business Associate, or is made accessible to Business Associate by Covered Entity.

1.4 “Required By Law” means a mandate contained in law that compels an entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or any administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.

1.5 “Services” has the same meaning as in the Master Services Agreement.

1.6 “Use” or “Uses” mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate’s internal operations.

1.7 Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Regulations.

## **OBLIGATIONS OF BUSINESS ASSOCIATE**

2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate:

- (a) shall Use and Disclose Protected Health Information as necessary to perform the Services, and as provided in Sections 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 4.3 and 5.2 of this Agreement;
- (b) shall Disclose Protected Health Information to Covered Entity upon request;
- (c) may, as necessary for the proper management and administration of its business or to carry out its legal responsibilities:

- (i) Use Protected Health Information;
- (ii) Disclose Protected Health Information if the Disclosure is Required by Law;
- (iii) Disclose Protected Health Information to Business Associate's employees for the purpose of providing services described in any SOS entered into under the Master Services Agreement and for the purpose of managing its internal business processes relating to its functions under the Master Services Agreement;
- (iv) Disclose Protected health Information to Business Associated Affiliates for the purpose of providing the services described in any SOS entered into under the Master Services Agreement provided that the Business shall require that its Affiliate execute a Business Associate Protected Health Information Disclosure Agreement in the same form as this Agreement;
- (v) Disclose Protected Health Information to other persons as approved in writing by the Project Director for the applicable SOS following review of the written approval by the County Counsel Public Services Division.

Business Associate shall not Use or Disclose Protected Health Information for any other purpose.

2.2 Adequate Safeguards for Protected Health Information. Business Associate warrants that it shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information in any manner other than as permitted by this Agreement. Business Associate agrees to limit the Use and Disclosure of Protected Health Information to the minimum necessary in accordance with the Privacy Regulation's minimum necessary standard.

2.3 Reporting Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity each Use or Disclosure that is made by Business Associate, its employees, representatives, agents or subcontractors but is not specifically permitted by this Agreement. The initial report shall be made by telephone call to the Project Director for the applicable SOS within forty-eight (48) hours from the time the Business Associate becomes aware of the non-permitted Use or Disclosure, followed by a full written report to the Los Angeles County Chief Information Privacy Officer, at Kenneth Hahn Hall of Administration 500 West Temple Street Room 525 Los Angeles California, 90012 no later than ten (10) business days from the date Business Associate becomes aware of the non-permitted Use or Disclosure.

2.4 Mitigation of Harmful Effect. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or

Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

2.5. Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of Protected Health Information available to the Secretary of the federal Department of Health and Human Services for purposes of determining Covered Entity's compliance with the Privacy Regulations. Business Associate shall immediately notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such request.

2.6 Access to Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a "designated record set" as defined by 45 C.F.R. § 164.501, make the Protected Health Information specified by Covered Entity available to the Individual(s) identified by Covered Entity as being entitled to access and copy that Protected Health Information. Business Associate shall provide such access for inspection of that Protected Health Information within two (2) business days after receipt of request from Covered Entity. Business Associate shall provide copies of that Protected Health Information within five (5) business days after receipt of request from Covered Entity.

2.7 Amendment of Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a "designated record set" as defined by 45 C.F.R. § 164.501, make any amendments to Protected Health Information that are requested by Covered Entity. Business Associate shall make such amendment within ten (10) days after receipt of request from Covered Entity in order for Covered Entity to meet the requirements under 45 C.F.R. § 164.526.

2.8 Accounting of Disclosures. Upon Covered Entity's request, Business Associate shall provide to Covered Entity an accounting of each Disclosure of Protected Health Information made by Business Associate or its employees, agents, representatives or subcontractors. Any accounting provided by Business Associate under this Section 2.8 shall include: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the Protected Health Information; (c) a brief description of the Protected Health Information disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that could require an accounting under this Section 2.8, Business Associate shall document the information specified in (a) through (d), above, and shall securely maintain the information for six (6) years from the date of the Disclosure. Business Associate shall provide to Covered Entity, within ten (10) days after receipt of request from Covered Entity, information collected in accordance with this Section 2.8 to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

## **OBLIGATION OF COVERED ENTITY**

3.1 Obligation of Covered Entity. Covered Entity shall notify Business Associate of any current or future restrictions or limitations on the use of Protected Health Information that would affect Business Associate's performance of the Services, and Business Associate shall thereafter restrict or limit its own uses and disclosures accordingly.

## **TERM AND TERMINATION**

4.1 Term. The term of this Agreement shall be the same as the term of the Master Services Agreement. Business Associate's obligations under Sections 2.1 (as modified by Section 4.2), 2.3, 2.4, 2.5, 2.6, 2.7, 4.3 and 5.2 shall survive the termination or expiration of this Agreement.

4.2 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in the Master Services Agreement, upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

(a) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

(b) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or

(c) If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary of the federal Department of Health and Human Services.

4.3 Disposition of Protected Health Information Upon Termination or Expiration.

(a) Except as provided in paragraph (b) of this section, upon termination for any reason or expiration of this Agreement, the Master Services Agreement, or any SOS issued thereunder, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make infeasible. If return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the

return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## MISCELLANEOUS

5.1 No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

5.2 Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that receive Protected Health Information from Business Associate, or create Protected Health Information for Business Associate, on behalf of Covered Entity, to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Agreement.

5.3 Relationship to Master Services Agreement Provisions. In the event that a provision of this Agreement is contrary to a provision of the Master Services Agreement, or any SOS issued thereunder, the provision of this Agreement shall control. Otherwise, this Agreement shall be construed under, and in accordance with, the terms of the Master Services Agreement.

5.4 Regulatory References. A reference in this Agreement to a section in the Privacy Regulations means the section as in effect or as amended.

5.5 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Regulations.

5.6 Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Regulations

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement effective as of the date stated above.

**Business Associate:**

MICROSOFT Corporation

By: David T. Gallagher

Title: Contracts Manager

Dated: 2-16-05

**Los Angeles County:**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_



## PRINCIPAL OWNER INFORMATION FORM

Los Angeles County Code Chapter 2.200 establishes the Los Angeles County Child Support Compliance Program. This Program requires the County to provide certain information to the Child Support Services Department (CSSD) concerning its employees and business licensees. It further requires that proposers for County contracts provide directly to the Child Support Services Department information concerning their "Principal Owners," that is, those natural persons who own an interest of 10 percent or more in the Contractor. For each "Principal Owner," the information which must be provided to the Child Support Services Department is: 1) the Principal Owner's name, 2) his or her title, and 3) whether or not the Contractor has made a payment of any sort to the Principal Owner.

IN ORDER TO COMPLY WITH THIS REQUIREMENT, COMPLETE THIS FORM AND SUBMIT IT DIRECTLY TO THE CSSD AT THE ADDRESS OR FAX NUMBER SHOWN BELOW ON OR BEFORE THE DATE YOU SUBMIT A PROPOSAL TO A COUNTY DEPARTMENT. MAINTAIN DOCUMENTATION OF SUBMISSION. SOLE PRACTITIONER MEMBERS OF AN ASSOCIATION MUST COMPLETE AND SUBMIT INDIVIDUAL FORMS.

In addition, proposers must certify to the soliciting County department that they are in full compliance with the Program requirements by submitting the Child Support Compliance Program Certification along with the bid or proposal.

To: Child Support Services Department  
Special Projects  
P.O. Box 911009  
Los Angeles, CA 90091-1009  
FAX: (323) 869-0634

Telephone: (323) 832-7277 or (323) 832-7276

Contractor or Association Name as Shown on Bid or Proposal: MICROSOFT Corporation

Contractor or Associated Member Name, If Contractor is an Association: \_\_\_\_\_

Contractor or Associated Member Address: MICROSOFT Corporation

ONE MICROSOFT WAY, Redmond, WA 98052

Telephone: 425-882-8080

FAX: 425-936-7329

County Department Receiving Bid or Proposal: \_\_\_\_\_

CSD

Type of Goods or Services To Be Provided: \_\_\_\_\_

IT Services + Support

Contract or Purchase Order No. (if applicable): \_\_\_\_\_

Principal Owners: Please check appropriate box. If box I is checked, no further information is required. Please sign and date the form below.

- I. ☐ No natural person owns an interest of 10 percent or more in this Contractor.  
II. ☒ Required principal owner information is provided below. (Use a separate sheet if necessary.)

|    | Name of Principal Owner     | Title                           | Payment Received<br>From Contractor                                     |
|----|-----------------------------|---------------------------------|---|
| 1. | <u>William H. Gates III</u> | <u>Chief Software Architect</u> | <input checked="" type="checkbox"/> [YES] <input type="checkbox"/> [NO] |
| 2. | _____                       | _____                           | <input type="checkbox"/> [YES] <input type="checkbox"/> [NO]            |
| 3. | _____                       | _____                           | <input type="checkbox"/> [YES] <input type="checkbox"/> [NO]            |

I declare under penalty of perjury that the foregoing information is true and correct.

By: David T. Gallagher Date: 2-16-05  
(Signature of a principal owner, an officer, or manager responsible for submission of the bid or proposal to the County.)

David T. Gallagher  
(Print Name)

Contracts Manager  
(Title/Position)



# 2004 PROXY STATEMENT

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## ANNUAL MEETING OF SHAREHOLDERS

The Annual Meeting of Shareholders of Microsoft Corporation will be held at the

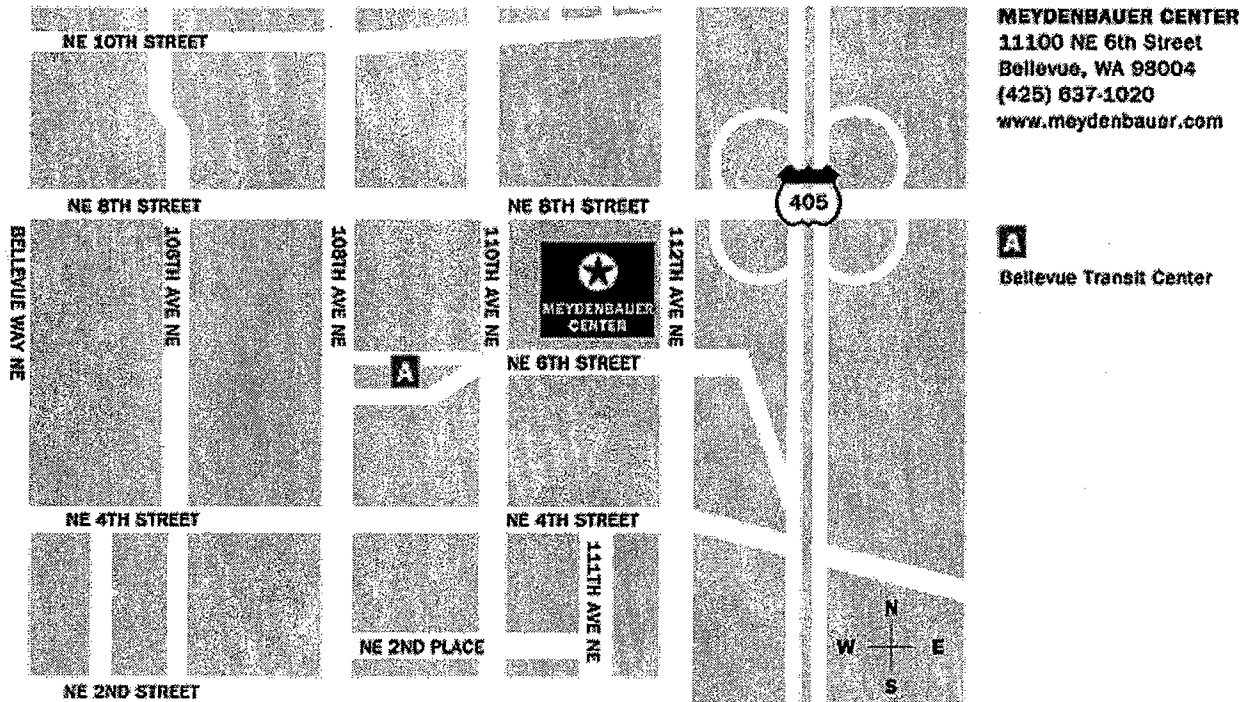
**MEYDENBAUER CENTER**  
11100 NE 6th Street  
Bellevue, Washington 98004

on November 9, 2004, at 8:00 A.M.

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## PARKING FACILITY AND DRIVING DIRECTIONS

### MAP: DOWNTOWN BELLEVUE



### DRIVING DIRECTIONS

- **From Seattle via SR-520:**
  - Take SR-520 east to I-405 south.
  - Take Exit 13B west onto NE 8th to 110th Avenue NE.
  - Turn left onto 110th to NE 6th Street.
  - Turn left onto NE 6th Street to Meydenbauer Center's parking garage.
- **From Seattle via I-90:**
  - Take I-90 east to I-405 north.
  - Take Exit 12 for the SE 8th Street exit and stay right.
  - At the stoplight, go left onto SE 8th Street.
  - Turn right onto 112th Avenue NE.
  - Turn left onto NE 6th Street to Meydenbauer Center's parking garage.

### PARKING

Due to limited parking availability, we encourage you to explore Metro's commuter services. The Bellevue Transit Center is conveniently located less than a block from Meydenbauer Center.

Parking validation for the Meydenbauer Center garage will be available at the meeting.



September 29, 2004

**Dear Shareholder:**

You are cordially invited to attend the annual meeting of shareholders of Microsoft Corporation, which will be held at the Meydenbauer Center, 11100 NE 6th Street, Bellevue, Washington 98004, on November 9, 2004, at 8:00 a.m. Driving directions to the Meydenbauer Center can be found on the inside front cover of this document. Parking will be validated only for the Meydenbauer Center garage. Please note that parking is limited, so plan ahead if you are driving to the meeting.

Details of the business to be conducted at the annual meeting are given in the attached Notice of Annual Meeting and Proxy Statement.

You will notice in reading the proxy statement that Wm. G. Reed, Jr., a director of the Company since 1987, is retiring from the Board of Directors and hence, not standing for re-election. We want to express our deep appreciation to Gary for his valuable contributions to Microsoft during his 17 years of service.

Whether or not you attend the annual meeting, it is important that your shares be represented and voted at the meeting. Therefore, I urge you to promptly vote and submit your proxy by phone, via the Internet, or by signing, dating, and returning the enclosed proxy card in the enclosed envelope. If you decide to attend the annual meeting, you will be able to vote in person, even if you have previously submitted your proxy.

We will provide live coverage of the annual meeting from the Microsoft Investor Relations website at [www.microsoft.com/msft](http://www.microsoft.com/msft). Additionally, the transcript along with video and audio of the entire annual meeting of shareholders will be available on the Investor Relations website after the meeting. We hope this will allow those of you who are unable to attend the meeting to hear Microsoft executives discuss the year's results.

On behalf of the Board of Directors, I would like to express our appreciation for your continued interest in the affairs of the Company. I look forward to greeting as many of our shareholders as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Ballmer".

**Steven A. Ballmer**  
Chief Executive Officer

The use of cameras is prohibited and they will not be allowed into the meeting or any other related areas, except by credentialed media. We realize that many cellular phones have built-in digital cameras, and while these phones may be brought into the venue, the camera function may not be used at any time.

MICROSOFT CORPORATION

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

November 9, 2004

**To the Shareholders:**

The annual meeting of the shareholders of Microsoft Corporation will be held at the Meydenbauer Center, 11100 NE 6th Street, Bellevue, Washington 98004, on November 9, 2004, at 8:00 a.m. for the following purposes:

1. To elect directors.
2. To consider and vote upon proposed amendments to the 2001 Stock Plan and the 1991 Stock Option Plan.
3. To consider and vote upon proposed amendments to the 1999 Stock Plan for Non-Employee Directors, the Stock Option Plan for Non-Employee Directors, and the Stock Option Plan for Consultants and Advisors.
4. To consider and vote upon the material terms of the performance criteria for awards under the 2001 Stock Plan.
5. To ratify the selection of Deloitte & Touche LLP as the Company's independent auditor for fiscal year 2005.
6. To transact such other business as may properly come before the meeting.

Only shareholders of record at the close of business on September 10, 2004, are entitled to notice of, and to vote at, this meeting.

**By order of the Board of Directors**



**Bradford L. Smith**  
Secretary

Redmond, Washington  
September 29, 2004

**IMPORTANT**

Whether or not you expect to attend in person, we urge you to vote your shares at your earliest convenience. This will ensure the presence of a quorum at the meeting. Promptly voting your shares by telephone, via the Internet, or by signing, dating, and returning the enclosed proxy card will save the Company the expenses and extra work of additional solicitation. An addressed envelope for which no postage is required if mailed in the United States is enclosed if you wish to vote by mail. Submitting your proxy now will not prevent you from voting your shares at the meeting if you desire to do so, as your proxy is revocable at your option.

MICROSOFT CORPORATION  
ONE MICROSOFT WAY  
REDMOND, WASHINGTON 98052

PROXY STATEMENT FOR ANNUAL MEETING OF SHAREHOLDERS  
TO BE HELD NOVEMBER 9, 2004

This Proxy Statement, which was first mailed to shareholders on or about September 29, 2004, is furnished in connection with the solicitation of proxies by the Board of Directors of Microsoft Corporation (the "Company" or "Microsoft"), to be voted at the annual meeting of the shareholders of the Company, which will be held at 8:00 a.m. on November 9, 2004, at the Meydenbauer Center, 11100 NE 6th Street, Bellevue, Washington 98004, for the purposes set forth in the accompanying Notice of Annual Meeting of Shareholders. Shareholders who execute proxies retain the right to revoke them at any time before the shares are voted by proxy at the meeting. A shareholder may revoke a proxy by delivering a signed statement to the Secretary of the Company at or prior to the annual meeting or by executing and delivering another proxy dated as of a later date. The Company will pay the cost of solicitation of proxies.

Shareholders of record at the close of business on September 10, 2004 will be entitled to vote at the meeting on the basis of one vote for each share held. On September 10, 2004, there were 10,880,648,840 shares of common stock outstanding, held of record by 143,122 shareholders.

1. ELECTION OF DIRECTORS AND MANAGEMENT INFORMATION

The Company's Board of Directors currently consists of ten members. Wm. G. Reed, Jr., a director of the Company since 1987, is retiring from the Board effective as of the date of the annual meeting. In connection with the retirement of Mr. Reed, the Board of Directors has authorized a reduction in the size of the Board to nine members effective as of November 9, 2004, as permitted by the Company's Bylaws.

Nine directors are to be elected at the annual meeting to hold office until the next annual meeting of shareholders and until their successors are elected and qualified. The accompanying proxy will be voted in favor of the following persons to serve as directors unless the shareholder indicates to the contrary on the proxy. The election of the Company's directors requires a plurality of the votes cast in person or by proxy at the meeting. Management expects that each of the nominees will be available for election, but if any of them is unable to serve at the time the election occurs, the proxy will be voted for the election of another nominee to be designated by the Board of Directors.

**NOMINEES**

William H. Gates III, 48, as a co-founder of the Company, has served as Chairman since the Company's incorporation in 1981. Mr. Gates served as the Company's Chief Executive Officer from 1981 until January 2000, when he resigned as Chief Executive Officer and assumed the position of Chief Software Architect. Mr. Gates is also a director of ICOS Corporation.

Steven A. Ballmer, 48, has headed several Microsoft divisions during the past 20 years, including operations, operating systems development, and sales and support. In July 1998, he was promoted to president, a role that gave him day-to-day responsibility for running Microsoft. He was named Chief Executive Officer in January 2000, assuming full management responsibility for the Company. Mr. Ballmer is also a director of Accenture Ltd.

James I. Cash Jr., Ph.D., 56, has been a director of the Company since May 2001. Dr. Cash is formerly The James E. Robison Professor of Business Administration at Harvard Business School, where he also served as Senior Associate Dean and Chairman of HBS Publishing. Dr. Cash is also a member of the board of directors of The Chubb Corporation, General Electric Company, Phase Forward Incorporated and Scientific-Atlanta, Inc.

Raymond V. Gilmartin, 63, has been a director of the Company since April 2001. Mr. Gilmartin has been the Chairman of the Board, President and Chief Executive Officer of Merck & Co., Inc. since 1994. Prior to joining Merck, Mr. Gilmartin was Chairman, President and Chief Executive Officer of Becton Dickinson and Company. He joined that company in 1976 as Vice President, Corporate Planning, taking on positions of increasing responsibility over the next 18 years. Mr. Gilmartin also serves on the board of directors of General Mills, Inc.

Ann McLaughlin Korologos, 62, has been a director of the Company since January 2000. Mrs. Korologos serves as Senior Advisor with Benedetto, Gartland & Co., Inc., a private investment banking company. Mrs. Korologos served as the United States Secretary of Labor from 1987 to 1989. She currently serves as a member of the board of directors of AMR Corporation (and its subsidiary, American Airlines), Fannie Mae, Harman International Industries, Inc., Host Marriott Corporation, and Kellogg Company.

David F. Marquardt, 55, has served as a director of the Company since 1981. Mr. Marquardt is a founding general partner of August Capital, a venture capital firm formed in 1995, and has been a general partner of various Technology Venture Investors entities, which are private venture capital limited partnerships, since August 1980. He is a director of Netopia, Inc., Seagate Technology, Inc., Tumbleweed Communications Corp. Inc., and various privately held companies.

Charles H. Noski, 52, has served as a director of the Company since 2003. Mr. Noski has been Corporate Vice President and Chief Financial Officer of Northrop Grumman Corporation since December 2003. Mr. Noski joined AT&T in 1999 as Senior Executive Vice President and Chief Financial Officer and was named Vice Chairman of AT&T's Board of Directors in 2002. Mr. Noski retired from AT&T upon the completion of its restructuring in November 2002. Prior to joining AT&T, Mr. Noski was President, Chief Operating Officer, and a member of the board of directors of Hughes Electronics Corporation, a publicly-traded subsidiary of General Motors Corporation in the satellite and wireless communications business. He is a member of the American Institute of Certified Public Accountants and a past member of the Financial Accounting Standards Advisory Council. Mr. Noski is also a director of Northrop Grumman Corporation.

Dr. Helmut Panke, 58, has served as a director of the Company since 2003. Dr. Panke has been with BMW Bayerische Motoren Werke AG since 1982 in a variety of positions and, since May 2002, has served as Chairman of the Board of Management. From 1999 to 2002, he served as Member of the Board of Management for Finance. From 1996 to 1999, Dr. Panke was Member of the Board of Management for Human Resources and Information Technology. In his role as Chairman and CEO of BMW (US) Holding Corp. from 1993 to 1996, he was responsible for the company's North American activities. Dr. Panke is also a director of UBS AG.

Jon A. Shirley, 66, served as President and Chief Operating Officer of Microsoft from 1983 to 1990. He has been a director of the Company since 1983. Prior to joining Microsoft, Mr. Shirley was with Tandy Corporation in a variety of positions.

#### **RETIRING DIRECTOR**

Wm. G. Reed Jr., 65, has been a director of the Company since 1987. Mr. Reed served as Chairman of Simpson Timber Company, a forest products company, from 1971 to 1986, and as Chairman of Simpson Investment Company from 1986 to 1996. He is also a director of PACCAR, Inc., Safeco Corporation, and Washington Mutual, Inc.

#### **INFORMATION ABOUT THE BOARD AND ITS COMMITTEES**

The system of governance practices followed by the Company is memorialized in the Microsoft Corporation Corporate Governance Guidelines and the charters of the five committees of the Board of Directors. The Governance Guidelines and charters are intended to assure that the Board will have the necessary authority and practices in place to review and evaluate the Company's business operations and to make decisions that are independent of the Company's management. The Governance Guidelines also are intended to align the interests of directors and management with those of Microsoft's shareholders. The Governance Guidelines establish the practices the Board will follow with respect to board composition and selection, board meetings and involvement of senior management, chief executive officer performance evaluation, succession planning, board committees, and director compensation. The Board annually conducts a self-evaluation to assess compliance with the Governance Guidelines and identify opportunities to improve Board performance.

The Governance Guidelines and committee charters are reviewed periodically and updated as necessary to reflect changes in regulatory requirements and evolving oversight practices. The Governance Guidelines were most recently modified by the Board effective July 1, 2004 to, among other things, comply with corporate governance requirements contained in both the Nasdaq Stock Market ("Nasdaq") and New York Stock Exchange listing standards and make other enhancements to the Company's corporate governance policies, including creating the role of lead independent director. The chair of the Governance and Nominating Committee serves as the lead independent director. The lead independent director is responsible for coordinating the activities of the non-management directors, coordinate with the Chairman to set the agenda for Board meetings, chairing meetings of the non-management directors, and leading the Board's review of

the chief executive officer. The Board has five committees: an Audit Committee, a Compensation Committee, a Finance Committee, a Governance and Nominating Committee, and an Antitrust Compliance Committee. The Governance Guidelines, as well as the Charter for each committee of the Board, may be viewed at [www.microsoft.com/msft/corpinfo.mspx](http://www.microsoft.com/msft/corpinfo.mspx).

The Board of Directors holds regularly scheduled quarterly meetings. Typically, committee meetings occur the day prior to the board meeting. One quarter each year, the committee and board meetings occur on a single day so that the evening and following day can be devoted to presentations and discussions with senior management about long term Company strategy as part of the Board's annual retreat. In addition to the quarterly meetings, typically there are two other regularly scheduled meetings and several special meetings each year. At each quarterly board meeting, time is set aside for the non-management directors to meet without management present. The Board of Directors met nine times during the last fiscal year. All directors attended 75% or more of the Board meetings and meetings of the committees on which they served during fiscal year 2004. Directors are encouraged to attend the annual meeting of shareholders. Five directors attended the 2003 annual meeting.

The table below provides current membership and meeting information for each of the Board committees for the fiscal year. Committee memberships changed during the fiscal year. Following the election of directors at the Company's annual meeting in November 2003, Mr. Shirley stepped down from and Mr. Noski was appointed to the Audit Committee, Mrs. Korologos stepped down from and Mr. Noski was appointed to the Finance Committee, Mr. Gilmartin stepped down from and Dr. Panke was appointed to the Compensation Committee, and Dr. Cash stepped down from and Mr. Marquardt was appointed to the Governance and Nominating Committee.

| Name                               | Audit    | Compensation | Finance  | Governance & Nominating | Antitrust Compliance |
|------------------------------------|----------|--------------|----------|-------------------------|----------------------|
| Mr. Gates                          |          |              |          |                         |                      |
| Mr. Ballmer                        |          |              |          |                         |                      |
| Dr. Cash                           | X        |              |          |                         | X*                   |
| Mr. Gilmartin                      |          |              |          | X*                      | X                    |
| Mrs. Korologos                     |          | X*           |          |                         | X                    |
| Mr. Marquardt                      |          |              | X        | X                       |                      |
| Mr. Noski                          | X        |              | X        |                         |                      |
| Dr. Panke                          |          | X            |          |                         |                      |
| Mr. Reed                           | X*       | X            |          |                         |                      |
| Mr. Shirley                        |          |              | X*       |                         |                      |
| Total meetings in fiscal year 2004 | <u>8</u> | <u>6</u>     | <u>4</u> | <u>3</u>                | <u>4</u>             |

\* Committee Chairperson

Below is a description of each committee of the Board of Directors. Each of the committees has authority to engage legal counsel or other experts or consultants as it deems appropriate to carry out its responsibilities. The Board of Directors has determined that each member of each committee meets the standards of independence under the Governance Guidelines and applicable Nasdaq listing standards, including that each member is free of any relationship that would interfere with his or her individual exercise of independent judgment.

**Audit Committee:** The Audit Committee assists the Board of Directors in its oversight of the quality and integrity of the accounting, auditing, and reporting practices of the Company. The Audit Committee's role includes overseeing the work of the Company's internal accounting and auditing processes and discussing with management the Company's processes to manage business and financial risk, and for compliance with significant applicable legal, ethical, and regulatory requirements. The Audit Committee is responsible for the appointment, compensation, retention, and oversight of the independent auditor engaged to prepare or issue audit reports on the financial statements of the Company. The Audit Committee relies on the expertise and knowledge of management, the internal auditors, and the independent auditor in carrying out its oversight responsibilities. The Committee's specific responsibilities are delineated in the Audit Committee Responsibilities Calendar accompanying the Audit Committee Charter. The Charter and Responsibilities Calendar are attached as Exhibit 1 to this Proxy Statement. The Board of Directors has determined that each Audit Committee member has sufficient knowledge in financial and auditing matters to serve on the Committee. In addition, the Board has determined that Charles H. Noski is an "audit committee financial expert" as defined by Securities and Exchange Commission ("SEC") rules.



**Compensation Committee:** The primary responsibilities of the Compensation Committee are: (a) In conjunction with the lead independent director, review and approve the annual goals and objectives of the chairman and chief executive officer and evaluate performance against those goals and objectives; (b) approve the compensation of the chairman and chief executive officer; (c) oversee the performance evaluation of the Company's other executive officers and approve their compensation; (d) oversee and advise the Board on the adoption of policies that govern the Company's compensation programs; (e) oversee the Company's administration of its equity-based compensation and other benefit plans; and (f) approve grants of equity compensation awards under the Company's stock plan. The Compensation Committee's role includes producing the report on executive compensation required by SEC rules and regulations. The specific responsibilities and functions of the Compensation Committee are delineated in the Compensation Committee Charter.

**Finance Committee:** The Finance Committee is responsible for overseeing and making recommendations to the Board about the financial affairs and policies of the Company including: (a) Policies relating to the Company's cash flow, cash management and working capital, shareholder dividends and distributions, and share repurchases and investments; (b) financial strategies; (c) policies for managing financial risk; (d) tax planning and compliance; and (e) proposed mergers, acquisitions, divestitures, and strategic investments. The Finance Committee's role includes designating officers and employees who can execute documents and act on behalf of the Company in the ordinary course of business under previously approved banking, borrowing, and other financing agreements. The specific responsibilities and functions of the Finance Committee are delineated in the Finance Committee Charter.

**Governance and Nominating Committee:** The principal responsibilities of the Governance and Nominating Committee are to: (a) Determine the slate of director nominees for election to the Company's Board of Directors; (b) identify and recommend candidates to fill vacancies occurring between annual shareholder meetings; (c) review the composition of Board committees; (d) monitor compliance with, review, and recommend changes to the Company's Corporate Governance Guidelines; and (e) review the Company's policies and programs that relate to matters of corporate responsibility, including public issues of significance to the Company and its stakeholders. The Governance and Nominating Committee's role includes periodically reviewing the compensation paid to non-employee directors, and making recommendations to the Board for any adjustments. In addition, the Chair of the Governance and Nominating Committee acts as the lead independent director and is responsible for leading the Board of Directors' annual review of the chief executive officer's performance. The Governance and Nominating Committee regularly reviews the charters of Board committees and, after consultation with the respective committee chairs, makes recommendations, if necessary, about changes to the charters. The specific responsibilities and functions of the Governance and Nominating Committee are delineated in the Governance and Nominating Committee Charter.

The Governance and Nominating Committee annually reviews with the Board the applicable skills and characteristics required of Board nominees in the context of current Board composition and Company circumstances. In making its recommendations to the Board, the Governance and Nominating Committee considers, among other things, the qualifications of individual director candidates. The Governance and Nominating Committee works with the Board to determine the appropriate characteristics, skills, and experiences for the Board as a whole and its individual members with the objective of having a Board with diverse backgrounds and experience in business, government, education, and public service. In evaluating the suitability of individual Board members, the Board takes into account many factors, including general understanding of marketing, finance, and other disciplines relevant to the success of a large publicly traded company in today's business environment; understanding of the Company's business and technology; educational and professional background; and personal accomplishment. The Board evaluates each individual in the context of the Board as a whole, with the objective of recommending a group that can best perpetuate the success of the Company's business and represent shareholder interests through the exercise of sound judgment, using its diversity of experience. In determining whether to recommend a director for re-election, the Governance and Nominating Committee also considers the director's past attendance at meetings and participation in and contributions to the activities of the Board.

The Committee will consider shareholder recommendations for candidates for the Board. The name of any recommended candidate for director, together with a brief biographical sketch, a document indicating the candidate's willingness to serve, if elected, and evidence of the nominating shareholder's ownership of Company stock should be sent to the attention of the Deputy General Counsel, Finance and Operations, of the Company.

**Antitrust Compliance Committee:** The Antitrust Compliance Committee oversees the performance of the Compliance Officer, who is charged under the Final Judgment entered by the District Court for the District of Columbia in *State of New York et al. v. Microsoft Corp.*, No. 98-1232 (the "Final Judgment") with developing and supervising Microsoft's internal programs and processes to ensure compliance with antitrust laws and the Final Judgment. The Compliance Officer reports directly to the Antitrust Compliance Committee and the Chief Executive Officer, and may be removed by the Chief Executive Officer only with the concurrence of the Committee. The specific responsibilities in carrying out the Antitrust Compliance Committee's oversight role are delineated in the Antitrust Compliance Committee Responsibilities Checklist.

attached to the Antitrust Compliance Committee Charter. The Compliance Officer is required to maintain a record of complaints received and actions taken by the Company with respect to them and to report credible evidence of violations of the Final Judgment to the Final Judgment plaintiffs. The Antitrust Compliance Committee receives regular reports from the Compliance Officer about existing and planned internal compliance programs and processes, complaints received and the Company's response to them, and violations reported to the Final Judgment plaintiffs. In addition, the Antitrust Compliance Committee receives reports from the General Counsel and from other members of management about compliance with the Final Judgment and about other issues that may arise concerning the Company's compliance with antitrust and competition laws. The Antitrust Compliance Committee can authorize further inquiries into matters reported to it for the purpose of ensuring the adequacy of the Company's processes and programs for fulfilling its obligations under the Final Judgment and antitrust laws. The Antitrust Compliance Committee provides guidance to the Compliance Officer and to management and reports regularly to the Board of Directors.

*Director Compensation.* Messrs. Gates and Ballmer receive no compensation for serving as directors, except that they, like all directors, are eligible to receive reimbursement of any expenses incurred in attending Board and committee meetings. During fiscal year 2004, each director, other than Messrs. Gates and Ballmer, received compensation for serving on the Board of Directors and committees of the Board as follows:

- An annual retainer of \$50,000;
- for each Board Committee chair, an annual retainer of \$10,000;
- a per meeting fee of \$1,000 for attendance at special meetings of Board Committees; and
- a stock award grant for 4,000 shares, which vests over 5 years.

In fiscal year 2004, there was one special meeting of the Antitrust Compliance Committee and one special meeting of the Compensation Committee, which was attended by each member, and for which each member was paid the per meeting fee of \$1,000.

#### **Shareholder Communications to the Board**

Shareholders may contact an individual director, the lead independent director, the Board as a group, or a specified Board committee or group, including the non-employee directors as a group, by the following means:

Mail: Microsoft Corporation  
One Microsoft Way  
Redmond, WA 98052-6399  
Attn: Board of Directors

Email: [askboard@microsoft.com](mailto:askboard@microsoft.com)

Each communication should specify the applicable addressee or addressees to be contacted as well as the general topic of the communication. The Company will initially receive and process communications before forwarding them to the addressee. The Company generally will not forward to the directors a shareholder communication that it determines to be primarily commercial in nature or relates to an improper or irrelevant topic, or that requests general information about the Company.

Concerns about accounting or auditing matters or possible violations of the Microsoft Standards of Business Conduct should be reported pursuant to the procedures outlined in the Standards of Business Conduct, which are available on the Company's website at [www.microsoft.com/mscorp/legal/buscond/](http://www.microsoft.com/mscorp/legal/buscond/).

**INFORMATION REGARDING BENEFICIAL OWNERSHIP  
OF PRINCIPAL SHAREHOLDERS, DIRECTORS, AND MANAGEMENT**

The following table sets forth, as of September 10, 2004, information regarding the beneficial ownership of the Company's common shares by all directors, the Company's Chief Executive Officer and the four other highest paid executive officers (the "Named Executive Officers"), and the directors and executive officers as a group.

| Names   | Amount and Nature of Beneficial Ownership<br>of Common Shares as of 9/10/2004 <sup>(1)</sup> | Percent<br>of Class |
|---|--|---------------------|
| William H. Gates III                                  | 1,097,499,336 <sup>(2)(3)</sup>  | 10.09%              |
| Steven A. Ballmer                                     | 410,967,990  | 3.78%               |
| James I. Cash Jr.                                     | 41,700 <sup>(4)</sup>  | *                   |
| Raymond V. Gilmartin                                  | 31,500 <sup>(5)</sup>  | *                   |
| Ann McLaughlin Korologos                              | 62,000 <sup>(6)</sup>  | *                   |
| David F. Marquardt                                    | 2,429,118 <sup>(7)</sup>   | *                   |
| Charles H. Noski                                      | 5,136 <sup>(8)</sup>   | *                   |
| Helmut Panke  | 650  | *                   |
| Wm. G. Reed Jr.                                       | 1,263,744 <sup>(9)</sup>   | *                   |
| Jon A. Shirley  | 3,771,690 <sup>(10)</sup>  | *                   |
| James E. Allchin                                      | 1,584,096 <sup>(11)</sup>  | *                   |
| Kevin R. Johnson                                      | 438,467 <sup>(12)</sup>  | *                   |
| Jeffrey S. Raikes                                     | 15,013,396 <sup>(13)</sup>   | *                   |
| Executive Officers, Directors as a group (24 persons) | 1,557,236,763 <sup>(14)</sup>  | 14.27%              |

\* Less than 1%

- (1) Beneficial ownership represents sole voting and investment power. To the Company's knowledge, Mr. Gates was the only shareholder who beneficially owned more than 5% of the outstanding common shares as of September 10, 2004.
- (2) The business address for Mr. Gates is: Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052.
- (3) Excludes 428,520 shares held by Mr. Gates' wife, as to which he disclaims beneficial ownership.
- (4) Includes 27,500 options to purchase Company stock exercisable within sixty days of September 10, 2004 ("Vested Options"), and excludes 200 shares held in an account for the benefit of Dr. Cash's nephew, as to which he disclaims beneficial ownership.
- (5) Includes 27,500 Vested Options, and excludes 1,200 shares held by Mr. Gilmartin's wife, as to which he disclaims beneficial ownership.
- (6) Includes 60,000 Vested Options.
- (7) Includes 300,000 Vested Options.
- (8) Includes 1,400 shares held in trusts for two of Mr. Noski's minor children.
- (9) Includes 1,022,000 shares and 20,000 Vested Options held by Riviera LLC, a family limited liability company of which Mr. Reed and his wife own a majority of the membership units, and 40,000 Vested Options held by Mr. Reed directly.
- (10) Includes 1,308,940 shares held by the Shirley Family Limited Partnership, a limited partnership of which Mr. Shirley is the president of the sole general partner, and 60,000 Vested Options.
- (11) Includes 1,575,000 Vested Options.
- (12) Includes 426,900 Vested Options.
- (13) Includes 6,575,000 Vested Options.
- (14) Includes 30,423,162 Vested Options.

## INFORMATION REGARDING EXECUTIVE OFFICER COMPENSATION

The following table discloses compensation received for the three fiscal years ended June 30, 2004 by the Named Executive Officers.

### SUMMARY COMPENSATION TABLE

| Name and Principal Position  | Year | Annual Compensation |                      | Long-Term Compensation Awards  |                                   |                                       |
|--|------|---------------------|----------------------|--------------------------------|-----------------------------------|---------------------------------------|
|  |      | Salary              | Bonus <sup>(1)</sup> | Restricted Stock Award(s) (\$) | Securities Underlying Options (#) | All Other Compensation <sup>(2)</sup> |
| Steven A. Ballmer<br>Chief Executive Officer; Director                             | 2004 | \$ 591,667          | \$ 310,000           | —                              | —                                 | \$ 7,865                              |
|  | 2003 | 550,000             | 313,447              | —                              | —                                 | 7,667                                 |
|  | 2002 | 545,833             | 205,810              | —                              | —                                 | 7,167                                 |
| William H. Gates III<br>Chairman; Chief Software Architect; Director               | 2004 | 591,667             | 310,000              | —                              | —                                 | 1,715                                 |
|  | 2003 | 550,000             | 313,447              | —                              | —                                 | 1,667                                 |
|  | 2002 | 545,833             | 205,810              | —                              | —                                 | 1,667                                 |
| James E. Allchin<br>Group Vice President, Platforms Group                          | 2004 | 558,334             | 342,000              | —                              | —                                 | 1,467,189 <sup>(3)</sup>              |
|  | 2003 | 504,168             | 400,000              | \$ 383,840 <sup>(4)</sup>      | 1,300,000                         | 5,456                                 |
|  | 2002 | 493,750             | 400,000              | —                              | —                                 | 5,445                                 |
| Kevin R. Johnson<br>Group Vice President; World Wide Sales, Marketing and Services | 2004 | 480,336             | 435,000              | —                              | —                                 | 1,043,942 <sup>(5)</sup>              |
|  | 2003 | 379,125             | 300,000              | 326,264 <sup>(6)</sup>         | 600,000                           | 7,036                                 |
|  | 2002 | 340,959             | 243,100              | —                              | 1,000,000                         | 7,387                                 |
| Jeffrey S. Raikes<br>Group Vice President, Information Worker Business             | 2004 | 562,500             | 400,000              | —                              | —                                 | 7,558                                 |
|  | 2003 | 522,917             | 300,000              | 383,840 <sup>(4)</sup>         | 1,300,000                         | 7,392                                 |
|  | 2002 | 493,749             | 250,000              | —                              | —                                 | 6,834                                 |

- (1) The amounts disclosed in the Bonus column were all awarded under the Company's executive bonus program.
- (2) Except as indicated in notes 3 and 5, the amounts disclosed in the All Other Compensation column consist of Company contributions under the Company's 401(k) plan and imputed insurance costs, as follows. Mr. Ballmer: 401(k) matching contributions of \$6,150 for 2004, \$6,000 for 2003, and \$5,500 for 2002; imputed insurance costs of \$1,715 for 2004, \$1,667 for 2003, and \$1,667 for 2002. Mr. Gates: these amounts reflect imputed insurance costs for each of the fiscal years. Mr. Allchin: 401(k) matching contributions of \$4,100 for 2004, \$4,000 for 2003, and \$4,000 for 2002; imputed insurance costs of \$1,498 for 2004, \$1,456 for 2003, and \$1,445 for 2002. Mr. Johnson: 401(k) matching contributions of \$6,150 for 2004, \$6,021 for 2003, and \$6,240 for 2002; imputed insurance costs of \$1,443 for 2004, \$1,015 for 2003, and \$1,148 for 2002. Mr. Raikes: 401(k) matching contributions of \$6,150 for 2004, \$6,000 for 2003, and \$5,500 for 2002; imputed insurance costs of \$1,408 for 2004, \$1,392 for 2003, and \$1,334 for 2002.
- (3) Includes \$1,461,600 received by the executive in fiscal year 2004 in connection with the Company's stock option transfer program plan. The executive transferred 6,000,000 stock options in the Company's stock option transfer program that was completed in December 2003. The amount received by the executive in fiscal year 2004 is one-third of the total payment for the transferred options. The remaining amount will be paid to the executive in equal installments (plus interest) after November 12, 2005 and November 12, 2006 provided the executive remains continuously employed through those dates. See also note 2.
- (4) Represents the grant of stock awards under which the executive has the right to receive, subject to vesting, 16,000 shares of common stock. The stock awards vest over five years at 20% per year beginning on the first anniversary of the grant. The value set forth above is based on the closing price on the date of grant, July 31, 2002, which was \$23.99 (as adjusted for the 2-for-1 stock split on February 18, 2003). The value as of June 30, 2004 of the remaining 12,800 unvested stock awards, together with the 780,000 shares (assuming target performance) issuable under the shared performance stock award described below under "Long-Term Incentive Compensation Plans — Awards in Last Fiscal Year," was \$22,642,368. The stock awards and shared performance stock awards are not entitled to dividends or dividend equivalents.
- (5) Includes \$1,036,349 received by the executive in fiscal year 2004 in connection with the Company's stock option transfer program. The executive transferred 2,404,000 stock options in the Company's stock option transfer program that was completed in December 2003. The amount received by the executive in fiscal year 2004 is one-third of the total payment for the transferred options. The remaining amount will be paid to the executive in equal installments

(plus interest) after November 12, 2005 and November 12, 2006 provided the executive remains continuously employed through those dates. See also note 2.

- (6) Represents the grant of stock awards under which the executive has the right to receive, subject to vesting, 13,600 shares of common stock. The stock awards vest over five years at 20% per year beginning on the first anniversary of the grant. The value set forth above is based on the closing price on the date of grant, July 31, 2002, which was \$23.99 (as adjusted for the 2-for-1 stock split on February 18, 2003). The value as of June 30, 2004 of the remaining 10,880 unvested stock awards, together with the 320,000 shares (assuming target performance) issuable under the shared performance stock award described below under "Long-Term Incentive Compensation Plans — Awards in Last Fiscal Year," was \$9,449,933. The stock awards and shared performance stock awards are not entitled to dividends or dividend equivalents.

## OPTION GRANTS IN LAST FISCAL YEAR

No stock options were granted to any of the Named Executive Officers during fiscal year 2004.

## AGGREGATED OPTION EXERCISES IN LAST FISCAL YEAR AND FISCAL YEAR-END OPTION VALUES

The following table provides information on option exercises in fiscal year 2004 by the Named Executive Officers and the value of their unexercised options at June 30, 2004.

| Name                 | Shares<br>Acquired<br>on Exercise (#) | Value<br>Realized (\$) | Number of Securities<br>Underlying Unexercised<br>Options at Fiscal Year-End (#) |               | Value of Unexercised In-the-<br>Money Options at Fiscal Year-End (\$) |               |
|----------------------|---------------------------------------|------------------------|--|---------------|---|---------------|
|                      |                                       |                        | Exercisable  | Unexercisable | Exercisable   | Unexercisable |
| Steven A. Ballmer    | —                                     | —                      | —  | —             | —   | —             |
| William H. Gates III | —                                     | —                      | —  | —             | —   | —             |
| James E. Allchin     | 240,000                               | \$ 5,850,144           | 1,162,500  | 2,137,500     | \$ 1,365,125  | \$ 5,820,875  |
| Kevin R. Johnson     | —                                     | —                      | 299,400  | 735,000       | 498,639   | 2,529,975     |
| Jeffrey S. Raikes    | 2,160,000                             | 36,968,184             | 5,662,500  | 3,637,500     | 1,365,125   | 5,820,875     |

## LONG-TERM INCENTIVE PLANS — AWARDS IN LAST FISCAL YEAR

| Name                 | Number of Shares,<br>Units or other<br>Rights (#) | Performance or Other<br>Period until Maturation<br>or Payout | Target (#) | Maximum (#) |
|----------------------|---|--|------------|-------------|
| Steven A. Ballmer    | —   | —  | —          | —           |
| William H. Gates III | —   | —  | —          | —           |
| James E. Allchin     | 780,000   | 1/1/04 - 6/30/06   | 780,000    | 1,170,000   |
| Kevin R. Johnson     | 320,000   | 1/1/04 - 6/30/06   | 320,000    | 480,000     |
| Jeffrey S. Raikes    | 780,000   | 1/1/04 - 6/30/06   | 780,000    | 1,170,000   |

The shared performance stock award (“SPSA”) program is designed to reward recipients based on growth in the number and satisfaction of Microsoft customers as measured by performance in the following areas: customer satisfaction, unit volumes of our Windows products and usage of our development tools, and desktop application deployment. These goals are designed to focus our top leaders on shared business goals to guide our long term growth and address our biggest challenges. For the current Named Executive Officers the program performance period is the two-and-one-half year period ending June 30, 2006. At the end of the performance period, the executive will receive stock awards in an aggregate amount equaling the number of target awards granted multiplied by a percentage derived from performance against goals. The award for the current Named Executive Officers will range from zero to 150% of target, which is the amount of the award if maximum performance is reached. One-third of the total award will be paid following the end of the performance period in the form of Microsoft common stock. The remaining two-thirds will be paid in the form of Microsoft common stock over the following two years in equal installments on or about August 31, 2007 and August 31, 2008, subject to continued employment. The SPSA award is subject to forfeiture if the executive’s employment terminates before the end of the performance period for any reason other than disability or death. Similarly, unpaid amounts are forfeited if the executive’s employment terminates prior to the payment date for any reason other than disability or death. The Compensation Committee may amend the program to take into account extraordinary events that impact Microsoft’s business. The awards granted to Messrs. Allchin, Johnson and Raikes do not include a specific threshold level of performance below which no award will be payable.

## REPORT OF THE MICROSOFT CORPORATION BOARD OF DIRECTORS COMPENSATION COMMITTEE

### *Compensation Philosophy and Practice*

Microsoft's compensation philosophy is to provide employees with a distinctive overall compensation package and the opportunity for outstanding performers to earn very competitive compensation over the long-term through a pay-for-performance approach. The key objectives of the company's executive compensation programs are to attract, motivate, and retain executives who drive Microsoft's success and industry leadership. The programs are designed to:

- Provide executives with competitive compensation that maintains a balance between cash and stock compensation and provides a significant portion of total compensation at risk, tied both to annual and long-term performance of the Company as well as to the creation of shareholder value.
- Differentiate strongly within the organization so that Microsoft's best performers receive a highly competitive compensation package.
- Encourage executives to act as owners with an equity stake in the Company.

### *Components of Executive Compensation*

The compensation program for executive officers consists of the following components:

Cash. This includes base salary and any bonus award earned for the fiscal year's performance. The Company's cash compensation policies provide a base salary that is above the average of industry pay levels and offer bonuses that reward superior performance. Executives have the opportunity to earn an annual bonus of up to 100% of base salary based upon individually established performance goals. Individual bonus awards reflect the individual's performance compared to objectives for the year. For executives and other senior leaders, total compensation at risk increases with responsibility.

### Stock-based Incentives.

Stock Awards. During fiscal year 2004, Microsoft revised its equity compensation program as it began granting stock awards instead of stock options to employees. A stock award, or restricted stock unit award, is a grant of a right to receive shares that vests over time. As the stock award vests, employees receive Microsoft common shares that they own outright. We believe stock awards are a better way to provide significant equity compensation to employees that provides more predictable long-term rewards than stock options. The size of stock award grants was based on various factors relating to the responsibilities of the individual officers and their expected future contributions.

Shared Performance Stock Awards. Microsoft also instituted during fiscal 2004 the shared performance stock award program, a long-term incentive program for executives and other senior leaders under which a significant portion of stock-based compensation depends on the growth in the number and satisfaction of our customers over a three-year period.

Target SPSA awards were made during fiscal year 2004 for the fiscal 2004-2006 performance period. At the end of the performance period, the number of shares of stock and stock awards issued will be determined by adjusting upward or downward from the target in a range between 0% and 150% for the current Named Executive Officers, and between 33% and 150% for other executive officers, based on the Company's performance against the customer satisfaction and platform success objectives established for the performance period. Each stock award is equivalent in value to one share of Microsoft common stock. Shares of stock are issued following the end of the performance period and as the stock awards vest annually over the following two years.

The size of a person's SPSA grant depends on competitive long-term compensation data, the person's job, and the person's expected role in Microsoft's long-term performance. Details regarding the grants made to the Named Executive Officers with respect to the 2004-2006 fiscal year period are provided on page 9.

### *How Executive Pay Levels are Determined*

Microsoft participates in several executive compensation benchmarking surveys that provide summarized data on levels of base salary, target annual incentives, and stock-based and other long-term incentives. These surveys also provide benchmark information on compensation practices such as the prevalence of types of compensation plans and the proportion of the types of pay components as part of the total compensation package. These surveys are supplemented by other publicly available information and input from compensation consultants on other factors such as recent market trends. The comparison group includes a range of leading information technology companies and large market capitalization U.S. companies with whom Microsoft competes for executive talent.

### *How Microsoft's Use of Stock-Based Awards is Determined*

As described above, during fiscal year 2004 the Company's compensation and retention strategy included the use of stock awards and SPSA awards. The level of usage was determined based on factors such as compensation levels at comparison companies relative to Microsoft's target total compensation levels and desired mix of cash and equity pay. Each year, management determines the appropriate usage, balancing these factors against the projected needs of the business as well as financial considerations, including the projected impact on shareholder dilution. The Company emphasizes differentiation in executive stock compensation and in the broad-based stock award program.

### *Compensation for the Chairman and Chief Executive Officer*

The Compensation Committee annually approves the compensation of Steven A. Ballmer, Chief Executive Officer, and William H. Gates III, Chairman and Chief Software Architect. The compensation of Messrs. Ballmer and Gates reflects their status as significant shareholders of the Company. Their salary rates are below competitive levels elsewhere in industry and they do not participate in the Company's equity compensation program. They are eligible for an annual bonus of up to 100% of their salary based on a review of performance against objectives for the year. As the leaders of the Company they are focused on building long-term success, and as significant shareholders in the Company, their personal wealth is tied directly to sustained increases in the Company's value. Mr. Ballmer's bonus was determined based on an evaluation of his performance against his annual objectives including achievement of revenue and profit plans, achievement of major product development objectives, progress in improving the number and satisfaction of Company customers, progress in key competitive initiatives, and development of senior leadership.

### *Tax Deductibility under Section 162(m)*

Under Section 162(m) of the Internal Revenue Code, the Company may not deduct certain forms of compensation in excess of \$1,000,000 paid to any of the Named Executive Officers that are employed by the Company at year-end. The Committee believes that it is generally in the Company's best interests to comply with Section 162(m). Accordingly, the Committee has taken appropriate actions, to the extent it believes feasible, to preserve the deductibility of annual incentive and long-term performance awards. However, notwithstanding this general policy, the Committee also believes that there may be circumstances in which the Company's interests are best served by maintaining flexibility in the way compensation is provided, whether or not compensation is fully deductible under Section 162(m).

Ann McLaughlin Korologos  
Helmut Panke  
Wm. G. Reed Jr.

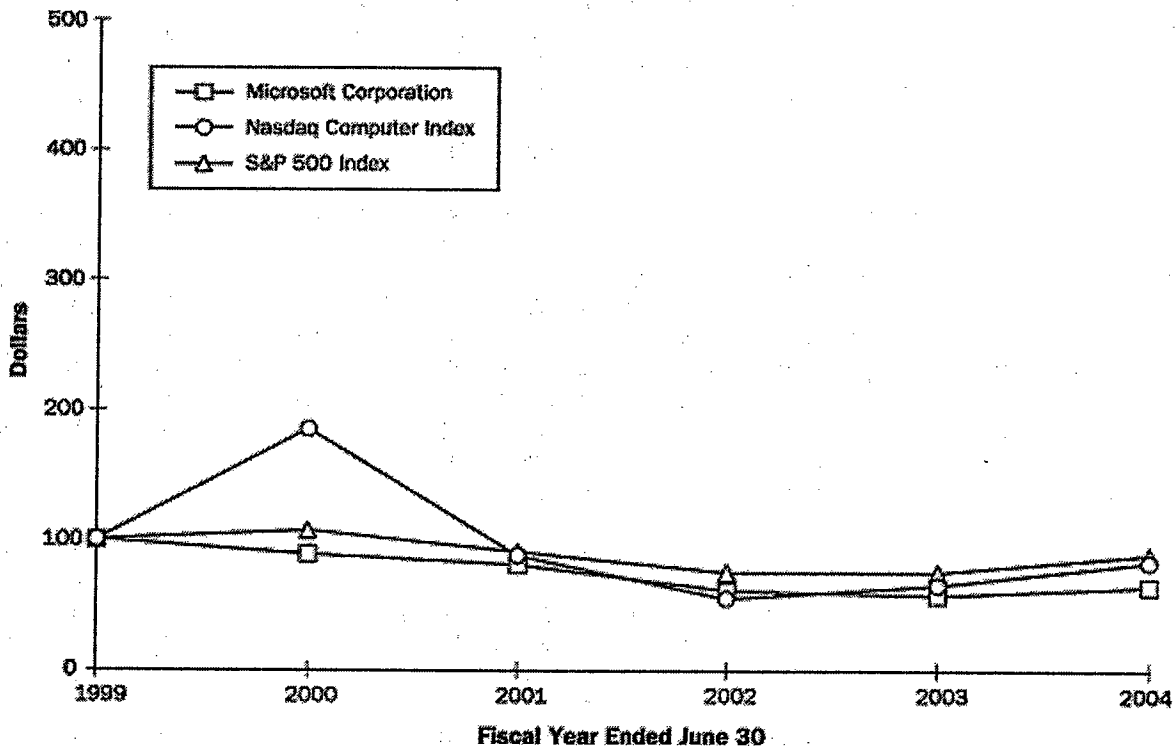


## PERFORMANCE GRAPH

The chart below compares the five-year cumulative total return, assuming the reinvestment of dividends, on Microsoft common stock with that of the S&P 500 Index and the NASDAQ Computer Index. This graph assumes \$100 was invested on June 30, 1999, in each of Microsoft common stock, the S&P 500 companies, and the companies in the NASDAQ Computer Index.

Note: Microsoft management cautions that the stock price performance shown in the graph below should not be considered indicative of potential future stock price performance.

### COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN AMONG MICROSOFT CORPORATION, THE S&P 500 INDEX AND THE NASDAQ COMPUTER INDEX



|                       | Cumulative Total Return |      |      |      |      |      |
|-----------------------|-------------------------|------|------|------|------|------|
|                       | 6/99                    | 6/00 | 6/01 | 6/02 | 6/03 | 6/04 |
| Microsoft Corporation | 100                     | 89   | 81   | 61   | 57   | 64   |
| S&P 500 Index         | 100                     | 107  | 91   | 75   | 75   | 89   |
| Nasdaq Computer Index | 100                     | 185  | 88   | 55   | 65   | 83   |

## CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Mr. Gates is the sole shareholder of Corbis Corporation, a company that provides digitized images and production services. The Company paid Corbis approximately \$1,018,000 in fiscal year 2004 as licensing fees for digital images. Those licenses were entered into at arm's length, and are similar to license agreements Microsoft enters into from time to time with other providers of digital images. The terms of the Corbis transactions are established by Corbis and the relevant business group at Microsoft seeking to use the digital images in Microsoft's products, services, and marketing materials. The Company believes the terms are no less favorable to Microsoft than what are offered by Corbis to other large customers. Mr. Gates is not involved in negotiating agreements with Corbis or setting price or other terms, either on behalf of Microsoft or Corbis. Microsoft's Audit Committee has reviewed and approved these arrangements.

A son of Mr. Shirley, a director of the Company; a brother-in-law of Robert J. (Robbie) Bach, an executive officer of the Company; and a brother-in-law of Eric D. Rudder, an executive officer of the Company, were employed by the Company or one of its subsidiaries in fiscal year 2004, and each of them received fiscal year 2004 compensation that exceeded \$60,000.

## SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

The following officers filed a late report on Form 4 relating to annual Stock Awards received in September 2003 and a late report on Form 5 relating to shared performance stock awards received in August 2003, due to an administrative oversight by the Company: Robert J. Bach, Douglas J. Burgum, David W. Cole, John G. Connors, Jean-Philippe Courtois, Kenneth A. DiPietro, Michelle J. Mathews, Eric D. Rudder, and Bradford L. Smith. The following officers filed a late report on Form 5 relating to shared performance stock awards received in August 2003, because of an administrative oversight by the Company: Craig J. Mundie and David Vaskevitch. The following officers filed a late report on either a Form 4 or a Form 5 relating to shares canceled in payment of withholding taxes on stock awards that vested in July 2003, because of an administrative oversight by the Company: James A. Allchin, Robert J. Bach, Douglas J. Burgum, David W. Cole, John G. Connors, Jean-Philippe Courtois, Kevin R. Johnson, Michelle J. Mathews, Craig J. Mundie, Jeffrey S. Raikes, Eric D. Rudder, Bradford L. Smith, and David Vaskevitch. Mr. Burgum filed a late report on amended Form 3 to report 230 shares (460 shares as adjusted for a stock split) inadvertently omitted from the total shares beneficially owned. Mr. Shirley was late in filing a report on Form 4 to report the sale of shares under a 10b5-1 trading plan.

## REPORT OF THE MICROSOFT CORPORATION BOARD OF DIRECTORS AUDIT COMMITTEE

The Audit Committee's purpose is to oversee the accounting and financial reporting processes of the Company, the audits of the Company's financial statements, the qualifications of the public accounting firm engaged as the Company's independent auditor to prepare or issue an audit report on the financial statements of the Company, and the performance of the Company's internal and independent auditors. The Committee's function is more fully described in its charter, which the Board has adopted and is included as Exhibit 1 to this Proxy Statement. The Committee reviews the charter on an annual basis. The Board annually reviews the Nasdaq listing standards definition of independence for audit committee members and has determined that each member of the Committee meets that standard as well as the definition of independence for audit committee members contained in the listing standards for the New York Stock Exchange.

Management is responsible for the preparation, presentation, and integrity of the Company's financial statements, accounting and financial reporting principles, internal controls, and procedures designed to ensure compliance with accounting standards, applicable laws, and regulations. The Company's independent auditor, Deloitte & Touche LLP, is responsible for performing an independent audit of the consolidated financial statements and expressing an opinion on the conformity of those financial statements with accounting principles generally accepted in the United States of America.

The Committee has reviewed and discussed the audited financial statements of the Company for the fiscal year ended June 30, 2004 with the Company's management and has discussed with Deloitte & Touche LLP the matters required to be discussed by Statement on Auditing Standards Board Standard No. 61, as amended, "Communication with Audit Committees" and SEC Regulation S-X, Rule 2-07. In addition, Deloitte & Touche LLP has provided the Audit Committee with the written disclosures and the letter required by the Independence Standards Board Standard No. 1, "Independence Discussions with Audit Committees," and the Audit Committee has discussed with Deloitte & Touche LLP their independence.

Based on these reviews and discussions, the Audit Committee recommended to the Board of Directors that the audited financial statements be included in the Company's Annual Report on Form 10-K for the fiscal year ended June 30, 2004, for filing with the Securities and Exchange Commission, and selected Deloitte & Touche LLP as the independent auditor for fiscal year 2005. The Board is recommending that shareholders ratify that selection at the annual meeting.

#### AUDIT COMMITTEE

James I. Cash Jr.  
Charles H. Noski  
Wm. G. Reed Jr.

## FEES BILLED BY DELOITTE & TOUCHE LLP

### Fees

The following table presents fees for professional audit services rendered by Deloitte & Touche LLP for the audit of the Company's annual financial statements for the years ended June 30, 2003 and 2004, and fees billed for other services rendered by Deloitte & Touche LLP during those periods.

(In millions)

| Year Ended June 30                | 2003           | 2004           |
|-----------------------------------|----------------|----------------|
| Audit Fees                        | \$ 10.7        | \$ 15.9        |
| Audit-Related Fees <sup>(1)</sup> | 7.7            | 6.9            |
| Tax Fees <sup>(2)</sup>           | 1.9            | 1.2            |
| All Other Fees <sup>(3)</sup>     | 7.2            | 2.8            |
| Total                             | <u>\$ 27.5</u> | <u>\$ 26.8</u> |

- (1) Audit-Related Fees consist of assurance and related services that are reasonably related to the performance of the audit or review of Microsoft's financial statements. This category includes fees related to the performance of audits and attest services not required by statute or regulations, audits of the Company's benefit plans, due diligence related to mergers, acquisitions, and investments, additional revenue and license compliance procedures related to performance of the review or audit of Microsoft's financial statements, and accounting consultations about the application of GAAP to proposed transactions. This category also includes additional revenue assurance and license compliance procedures under contracts that provide for review by an independent accountant, and advice about controls associated with the completeness and accuracy of the Company's software licensing revenue. These services support the evaluation of the effectiveness of internal controls over revenue recognition, and enhance the auditor's understanding of licensing programs and controls. An improved process was established in fiscal 2004 to review and track the nature of specific licensing-related service requests. This process provided for more comprehensive assessment of the classification of certain licensing compliance services. As a result, fees for certain types of services that appeared under "All Other Fees" in fiscal year 2003 appear in "Audit-Related Fees" in fiscal 2004.
- (2) Tax Fees consist of the aggregate fees billed for professional services rendered by Deloitte & Touche LLP for tax compliance, tax advice, and tax planning (domestic and international).
- (3) All Other Fees consist principally of services supporting the Company's volume licensing compliance and revenue assurance initiatives, including data analysis and risk assessment. As discussed in (1) above, an improved process was established in fiscal 2004 to track the nature of specific licensing-related service requests and associated fees that allowed additional differentiation in the nature of specific services. In the absence of that information in fiscal 2003 all of those fees were classified as "All Other Fees."

The Audit Committee has concluded the provision of the non-audit services listed above is compatible with maintaining the independence of Deloitte & Touche LLP.

### **Policy on Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services of Independent Auditor**

The Audit Committee is responsible for appointing, setting compensation, and overseeing the work of the independent auditor. The Audit Committee has established a policy regarding pre-approval of all audit and permissible non-audit services provided by the independent auditor. A centralized service request function is used to provide an initial assessment of requests from Company personnel for services by the independent auditor for compliance with the auditor services policy. The request must be specific as to the particular services to be provided. If the initial assessment is favorable, the request is forwarded for review to a group whose members come from the Company's Finance, Legal, Tax, and Internal Audit departments. Requests approved by the group are aggregated and submitted to the Audit Committee in one of the following ways:

1. Request for approval of services at a meeting of the Audit Committee; or
2. Request for approval of services by a designated member of the Audit Committee.

## INFORMATION REGARDING PROPOSALS 2 and 3

### **Background and Reason for Proposed Amendments to Stock Plans**

On July 20, 2004, Microsoft announced the decision by the Board of Directors to provide up to \$75 billion to shareholders over the next four years. This decision has three components:

- An increased regular dividend
- A stock buy-back program of up to \$30 billion over four years
- A special dividend of \$3.00 per share

The contributions of our employees have been critical to the success that allowed Microsoft to take these actions. Our stock compensation plans have played an important role in motivating this performance. Because our stock plans did not contemplate a special dividend to shareholders, the Board has approved plan amendments and award adjustments that would ensure employees, directors, consultants and advisors that hold awards under our stock plans are not disadvantaged by the special dividend. The Board and management determined that it would be appropriate to present the plan amendments to shareholders for their approval.

The amendments will allow adjustment of vested and unvested stock options and unvested stock awards to maintain their economic value after the special dividend equivalent to their pre-dividend value. In theory (and disregarding other events that may affect financial markets), when a company transfers part of its assets to shareholders, its stock price declines by the amount of the dividend once the ex-dividend date passes. For shareholders, any stock price decline is offset by the cash they receive in the form of the dividend. Microsoft's existing stock options, unvested stock awards, and shared performance stock awards are not eligible to receive a dividend, so we would adjust these awards based on the amount of the special dividend, applying the same arithmetic formula that would be used for other capital events such as stock splits or reorganizations.

The specific details of the adjustments are explained in the next section of this summary. We believe it is appropriate that all holders of Microsoft equity, including holders of stock options, stock awards and shared performance stock awards under our stock plans, be treated equally with respect to the special dividend. If Proposal 2, which relates to the amendments to the 2001 Stock Plan and the 1991 Stock Option Plan, is not approved by shareholders, out of fairness to our employees the special dividend would not be made, and the Board and management would consider other alternatives.

Adjustments to awards issued under the Company's stock plans described in the following proposals will only occur if shareholders approve the amendments to the relevant plan. The adjustments will not result in any equity compensation expense for the Company.

### **Special Dividend Adjustments if Amendments are Approved**

If shareholders approve the applicable amendments, awards that are outstanding immediately prior to the ex-dividend date for the special dividend will be adjusted as follows:

**Stock Options.** The exercise price will be adjusted downward and the number of options will be adjusted upward pursuant to the following formulas, where "Closing Price" means the official Nasdaq closing price of a share of Microsoft common stock on the last trading day before the ex-dividend date for the special dividend.

The exercise price of stock options outstanding immediately before the ex-dividend date will be adjusted downward to the product of:

$$\text{Pre-dividend Exercise Price} \times \frac{(\text{Closing Price} - \$3.00)}{\text{Closing Price}} = \text{Post-dividend Exercise Price}$$

The number of shares covered by each stock option outstanding immediately before the ex-dividend date will be adjusted upward to the product of:

$$\text{Number of Shares Pre-dividend} \times \frac{\text{Closing Price}}{(\text{Closing Price} - \$3.00)} = \text{Number of Shares Post-dividend}$$

Additional options outstanding as a result of these adjustments would be vested or unvested in proportion to the number of options covered by an award that are vested or unvested immediately before the adjustment, and the additional unvested options will vest on the remaining vesting dates applicable to such award, in proportion to the number of options that vest on each of those dates.

**Stock Awards.** The number of shares covered by each stock award will be adjusted upward by the number of shares that would be purchased if the special dividend was paid on the stock awards and that amount was reinvested in Microsoft stock at a price equal to the Closing Price minus the amount of the special dividend. Stated as a formula:

The number of shares covered by each stock award outstanding immediately before the ex-dividend date will be adjusted upward to the product of:

$$\text{Number of Shares Pre-dividend} \times \frac{\text{Closing Price}}{(\text{Closing Price} - \$3.00)} = \text{Number of Shares Post-dividend}$$

Additional stock awards outstanding as a result of these adjustments would vest on the remaining vesting dates applicable to such award, in proportion to the number of stock awards that vest on each of those dates.

**Shared Performance Stock Awards.** The target award for each outstanding shared performance stock award will be adjusted by using the same formula that applies for stock awards.

**Maximum Number of Shares Issuable under Plan.** The maximum number of shares issuable under each plan will be increased by the additional number of shares covered by options, stock awards, and shared performance stock awards outstanding under such plan as a result of the adjustments, however the number of shares remaining available for future awards under each plan immediately before the adjustments will be the same as the number of shares remaining available for future awards immediately after the adjustments.

#### **Different Treatment in Certain Jurisdictions**

The above examples describe the adjustments that would apply to the vast majority of our outstanding stock options and all outstanding unvested stock awards and shared performance stock awards. Stock options held by employees in countries where the Company determines there may be unfavorable tax consequences to employees as a result of an adjustment will not be adjusted for the special dividend. In lieu of an adjustment, the Company would grant those option holders stock awards with a value equal to the decline in the Black-Scholes value of the unadjusted options as a result of the special dividend, as determined by Microsoft. That grant would not be made pursuant to the adjustment provisions of the relevant plan; rather it would be a new grant under the 2001 Stock Plan.

#### **General**

This discussion is designed to help shareholders understand the proposed adjustments that would occur relating to the payment of the special dividend conditionally declared by the Board on July 20, 2004. The plan amendments would provide general authority to make adjustments in the event of any distribution of assets to shareholders other than a normal cash dividend. If any other distribution of assets to shareholders other than a normal cash dividend was declared in the future, the plan amendments would grant the Board authority to make adjustments to outstanding awards, which may or may not be identical to the adjustments described above. The plan amendments are not intended to override the requirement that the Company obtain shareholder approval for a repricing of awards; the amendments would only apply to the circumstance described above, similar to the adjustments that are currently permitted under the stock plans for other types of capital events such as a stock split, stock dividend, or recapitalization.

## 2. PROPOSAL FOR APPROVAL OF AMENDMENTS TO THE 2001 STOCK PLAN AND THE 1991 STOCK OPTION PLAN

On July 20, 2004, the Board of Directors declared a special dividend of \$3.00 per share of common stock payable December 2, 2004 to all shareholders of record on November 17, 2004, conditioned on shareholder approval of amendments to the 2001 Stock Plan (the "2001 Stock Plan") and the 1991 Stock Option Plan (the "1991 Plan"). Following the conditional declaration of the special dividend, the Board amended the 2001 Stock Plan and the 1991 Plan, subject to shareholder approval. If these amendments are approved, the board will have the authority to adjust awards under the 2001 Stock Plan and the 1991 Plan in connection with any distribution of assets other than a normal cash dividend. If these amendments are approved, the special dividend declared July 20, 2004 will be unconditional and the adjustments to the employee awards approved by the Board stock plans will occur on the ex-dividend date for the special dividend.

### **Proposed Amendments**

The Board has amended the 2001 Stock Plan and the 1991 Plan in similar ways to permit the Board to adjust awards, the numeric grant limitations in the plan, and the number of shares covered by the plan in the event of any distribution to shareholders other than a normal cash dividend. Microsoft proposes to restate the first paragraph of Section 14 of the 2001 Stock Plan to read as follows:

#### *14. Adjustments to Shares Subject to the Plan.*

If any change is made to the Shares by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Shares as a class without the Company's receipt of consideration, appropriate adjustments shall be made to (i) the maximum number and/or class of securities issuable under the Plan, (ii) the number and/or class of securities and/or the price per Share covered by outstanding Awards under the Plan, (iii) the Maximum Annual Participant Award, (iv) the maximum aggregate number of Shares underlying all Nonqualified Stock Options and SARs with a per Share exercise price of less than fair market value on any grant date that may be granted under the Plan, and (v) the maximum aggregate number of Shares underlying all Awards with a vesting period of less than three years. The Board may also make adjustments described in (i)-(v) of the previous sentence in the event of any distribution of assets to shareholders other than a normal cash dividend. In determining adjustments to be made under this Section 14, the Board may take into account such factors as it deems appropriate, including (i) the restrictions of applicable law, (ii) the potential tax consequences of an adjustment and (iii) the possibility that some Awardees might receive an adjustment and a distribution or other unintended benefit, and in light of such factors or circumstances may make adjustments that are not uniform or proportionate among outstanding Awards, modify vesting dates, defer the delivery of stock certificates or make other equitable adjustments. Any such adjustments to outstanding Awards will be effected in a manner that precludes the enlargement of rights and benefits under such Awards. Adjustments, if any, and any determinations or interpretations, including any determination of whether a distribution is other than a normal cash dividend, made by the Board shall be final, binding and conclusive. For purposes of this Section 14, conversion of any convertible securities of the Company shall not be deemed to have been effected without receipt of consideration. Except as expressly provided herein, no issuance by the Company of shares of any class, or securities convertible into shares of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares subject to an Award.

The adjustment provisions of Section 11 of the 1991 Plan have been similarly revised, subject to shareholder approval. Each amended plan also includes related changes to implement the effect of the revisions to the adjustment provisions. This section previously allowed for adjustments to awards for a capital event. It has been revised to provide express authority to make adjustments for distributions to shareholders other than a normal cash dividend.

For the reasons described under "Information Regarding Proposals 2 and 3," which begins on page 16 of this proxy statement, the Board has adopted resolutions approving, and recommending to the shareholders for their approval, amendments to the 2001 Stock Plan and the 1991 Plan.

Since the approval of the amended and restated 2001 Stock Plan at the 2003 Annual Meeting of Shareholders, the Board has approved the following additional changes to the 2001 Stock Plan.

- reduced the maximum aggregate number of shares underlying all stock awards that may be granted to any person in a single fiscal year from 20 million shares to 5 million shares; and

- added a requirement that all awards must contain a minimum three-year vesting period from the date of grant, except that awards covering up to 50 million shares (increased, proportionately, in the event of a stock split, stock dividend, or similar event) may be granted without regard to the three year vesting restriction, and performance-based awards and stock options assumed or substituted upon an acquisition are not subject to the three year vesting restriction.

These changes were made to have the terms of the 2001 Stock Plan better reflect the intended usage of the plan by the Company, and are now part of the 2001 Stock Plan whether or not this proposal is adopted.

The principal provisions of the amended and restated plans are summarized below. These summaries are qualified in their entirety by reference to the actual plans, copies of which are attached to the electronic copy of this Proxy Statement filed with the SEC and may be accessed from the SEC's home page ([www.sec.gov](http://www.sec.gov)). In addition, a copy of the 2001 Stock Plan and the 1991 Plan, each as amended and restated, for which shareholder approval is being sought may be obtained upon written request to: Investor Relations Department, Microsoft Corporation, One Microsoft Way, Redmond, WA 98052.

### **Description of the 2001 Stock Plan, as Amended and Restated, Subject to Shareholder Approval**

*General.* The purposes of the 2001 Stock Plan are to attract and retain the best available individuals for positions of substantial responsibility, to provide additional incentive to such individuals, and to promote the success of Microsoft's business by aligning the financial interests of employees and consultants providing personal services to the Company or its affiliates with long-term shareholder value. Stock options, stock awards, and stock appreciation rights may be granted under the 2001 Stock Plan. Options granted under the 2001 Stock Plan may be either "incentive stock options," as defined in Section 422 of the Internal Revenue Code ("Code"), or nonqualified stock options.

*Administration.* The 2001 Stock Plan is administered by the Board or the Compensation Committee of the Board (hereafter, the "Committee").

*Plan Benefits.* Because benefits under the 2001 Stock Plan depend on the Committee's actions and the fair market value of common stock at various future dates, it is not possible to determine the benefits that will be received by officers and other employees under the 2001 Stock Plan.

*Eligibility.* Incentive stock options may be granted only to employees of the Company or its subsidiaries. Nonqualified stock options, stock awards, and stock appreciation rights awards may be granted under the 2001 Stock Plan to employees and consultants of the Company, its affiliates and subsidiaries, as well as to persons to whom offers of employment as employees have been made. The Committee, in its discretion, will select the individuals to whom options, stock awards, and stock appreciation rights will be granted, the time or times when such awards are granted, and the number of shares subject to each grant.

*Shares Subject to the 2001 Stock Plan.* The total number of shares of Company common stock that may be awarded and delivered under the 2001 Stock Plan are (a) the number of shares that remained available for future awards under the Company's 1991 Plan as of January 1, 2001, the effective date of the 2001 Stock Plan, (b) plus any shares represented by awards under the 1991 Plan that expire, are forfeited, are cancelled without delivery of shares, or otherwise result in the return of shares to the Company, (c) minus 100,000,000 shares. In addition, when any award under the 2001 Stock Plan expires or for any reason shares underlying an award are not delivered in full, the undelivered shares will become available for future awards under the 2001 Stock Plan. Notwithstanding the foregoing, any awards represented by stock options transferred under an option transfer program, such as the program conducted by the Company in the second quarter of fiscal year 2004, will be removed from the 2001 Stock Plan, and the shares underlying the transferred stock options will not be available for regrant under the 2001 Stock Plan, regardless of whether the transferred stock options are exercised or expire unexercised. The shares that may be awarded and delivered under the 2001 Stock Plan may be authorized, but unissued, or reacquired common shares.

*Limitations.* The 2001 Stock Plan provides that the maximum aggregate number of Company common shares underlying all awards to be granted to any person in any single fiscal year of the Company is 20,000,000 shares of common stock (5 million shares for a stock award). The aggregate number of shares underlying all nonqualified stock options and all stock appreciation rights that may be granted under the 2001 Stock Plan at exercise prices which are less than fair market value at the dates of such grants may not exceed 50,000,000 (excluding certain replacement (conversion) options granted to employees, consultants and advisors of acquired entities). These limits are increased proportionately in the event of any stock split, stock dividend or similar event.



**Terms and Conditions of Awards.** Each award is to be evidenced by an award agreement between the Company and the individual awardee and is subject to the following additional terms and conditions:

**Exercise Price.** The Committee will determine the exercise price for the shares of common stock underlying each award at the time the award is granted. The exercise price for shares under an incentive stock option may not be less than 100% of the fair market value of the common stock on the date such option is granted. The exercise price for shares subject to a nonqualified stock option or stock appreciation right may not be less than 75% of the fair market value of the common stock on the date such award is granted, except that certain replacement (conversion) options with lower exercise prices for the underlying shares may be granted, in connection with acquisitions, to employees, consultants and advisors of acquired entities. The fair market value price for a share of Company common stock underlying each award is the closing price per share on Nasdaq on the date the award is granted. The closing price for one share of Microsoft common stock on September 14, 2004 was \$27.44. No award may be repriced, replaced, regranted through cancellation, or modified without shareholder approval (except in connection with a change in the Company's capitalization or similar event), if the effect would be to reduce the exercise price for the shares underlying such award.

**Exercise of Award; Form of Consideration.** The Committee will determine when awards become exercisable. Each award is required to have a minimum vesting period of not less than three years from the date of grant, except that the following are not subject to the three year vesting restriction: (i) awards covering up to 50,000,000 shares (increased, proportionately, in the event of any stock split, stock dividend or similar event) and (ii) awards that are granted or that vest subject to performance goals and awards assumed or substituted upon an acquisition.

The means of payment, if any, for shares issued upon exercise of an award will be specified in each award agreement. The 2001 Stock Plan permits payment to be made by cash, check, broker-assisted same day sales, and, in the case of certain executive officers, by delivery of other shares of Company stock which they have owned for six months or more as of the exercise date. For nonqualified stock options, stock awards, and stock received upon the exercise of stock appreciation rights, the option holder or stock recipient must also pay the Company, at the time of purchase, the amount of federal, state, and local withholding taxes required to be withheld by the Company. An award under the 2001 Stock Plan may permit or require that such withholding tax obligations be paid by having the Company withhold shares of common stock having a value equal to the amount required to be withheld. Certain executives of the Company may elect to pay their withholding obligations by having shares withheld.

**Performance Goals.** Awards may, but need not, vest or be granted subject to the satisfaction of one or more performance goals. Performance goals for awards will be determined by the Committee and will be designed to support the Company's business strategy, and align executives' interests with customer and shareholder interests. For awards that are intended to qualify as performance-based compensation under Section 162(m) of the Internal Revenue Code, performance goals will be based on one or more of the following business criteria: sales or licensing volume, revenues, customer satisfaction, expenses, organizational health/productivity, earnings (which includes similar measurements such as net profits, operating profits and net income, and which may be calculated before or after taxes, interest, depreciation, amortization or taxes), margins, cash flow, shareholder return, return on equity, assets, or investments, working capital, product shipments, product releases, brand or product recognition/acceptance, and/or stock price.

Achievement of the goals may be measured individually, alternatively, or in any combination; with respect to Microsoft, a subsidiary, division, business unit, product line, product, or any combination of the foregoing; on an absolute basis, or relative to a target, to a designated comparison group, to results in other periods, or to other external measures; and including or excluding items that could affect the measurement, such as extraordinary or unusual and nonrecurring gains or losses, litigation or claim judgments or settlements, material changes in tax laws, acquisitions, divestitures, the cumulative effect of accounting changes, asset write-downs, restructuring charges, or the results of discontinued operations.

**Term of Award.** The term of an award may be no more than ten years from the date of grant. No award may be exercised after the expiration of its term.

**Death or Disability.** If an awardee's employment or consulting relationship terminates as a result of his or her death or total and permanent disability, then his or her awards will vest to the extent of any vesting that would have occurred within the following 12 months had the employment or consulting relationship continued. Following death, an option or SAR may be exercised, to the extent vested and not expired, within the 12-month period following the awardee's death by his or her estate or by the person who acquires the exercise right by bequest or inheritance. Following total and permanent disability, an option or SAR may be exercised, to the extent vested and not expired, within the 18-month period following the date on which the awardee ceased performing services.

**Nontransferability of Awards.** Unless otherwise determined by the Committee, awards granted under the 2001 Stock Plan are not transferable other than by will or the laws of descent and distribution and may be exercised during the awardee's lifetime only by the awardee.

**Other Provisions.** An award agreement may contain other terms and provisions consistent with the 2001 Stock Plan, as may be determined by the Committee.

**Stock Awards.** Stock awards may be granted alone, in addition to, or in tandem with other awards under the 2001 Stock Plan. Unless the Committee determines otherwise, the award agreement will provide that any non-vested stock underlying the stock award is forfeited back to the Company upon the awardee's termination of employment or consulting relationship for any reason. If the unvested shares were purchased under a stock award, at the termination of employment or consulting relationship the shares will be immediately resold to the Company at the original purchase price.

**Stock Appreciation Rights.** Stock appreciation rights ("SARs") may be granted alone ("Stand-Alone SARs"), in addition to, or in tandem ("Tandem SARs") with a stock option under the 2001 Stock Plan. Upon exercise of a Stand-Alone SAR, the awardee will be entitled to receive the excess of the fair market value on the exercise date of the Company common shares underlying the SAR over the aggregate base price applicable to such shares; provided that the base price per share may not be less than the fair market value of such shares on the grant date. An awardee granted a Tandem SAR will be required to elect between exercising the underlying option and surrendering the option in exchange for a distribution from the Company equal to the excess of the fair market value on the surrender date of the shares that were vested under the surrendered option over the aggregate exercise price payable for such shares. Any such surrender must be first approved by the Committee. Distributions to the awardee may be made in common stock, in cash, or in a combination of stock and cash, as determined by the Committee.

**Adjustments to Shares Subject to the Plan.** If any change is made to the Company's common shares by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding shares as a class without the Company's receipt of consideration, appropriate adjustments shall be made to (i) the maximum number and/or class of securities issuable under the Plan, (ii) the number and/or class of securities and/or the price per share covered by outstanding awards under the Plan, (iii) the maximum annual award, (iv) the limit on nonqualified stock options and SARs with an exercise price of less than fair market value on the grant date, and (v) the limit on awards with a vesting period of less than three years. Such adjustments may also be made in the event of any distribution of assets to shareholders other than a normal cash dividend. In determining adjustments to be made under these provisions, the Board may take into account such factors as it deems appropriate. Any such adjustments to outstanding awards will be effected in a manner that precludes the enlargement of rights and benefits under such awards.

In the event of a liquidation or dissolution of the Company, any unexercised awards will terminate immediately prior to the proposed action unless otherwise determined by the Board. In the event of the sale of substantially all assets of the Company or a merger with or into another corporation In the event of the sale of substantially all assets of the Company or a merger with or into another corporation, each award shall be assumed or an equivalent award shall be substituted by the successor corporation or a parent or subsidiary of the successor corporation or, if not assumed, shall be fully vested.

**Amendment and Termination of the 2001 Stock Plan.** The Board may amend, alter, suspend, or terminate the 2001 Stock Plan, or any part thereof, at any time and for any reason. However, the Company shall obtain shareholder approval or ratification for any increase in the number of shares subject to the Plan (other than in connection with the adjustment provisions of the Plan), and for any award repricing, replacement, regrant through cancellation, or modification that reduces the exercise price for shares under the award. No such action by the Board or shareholders may affect any award previously granted under the 2001 Stock Plan without the written agreement of the awardee; provided that the consent of an awardee is not necessary for a modification or amendment of the award, or the acceleration or deferral of the award's vesting or exercise, that in the reasonable judgment of the Board confers a benefit on the awardee or is made in connection with the 2001 Stock Plan's provisions for adjustment of shares in the event of changes to the shares underlying the award or the distribution of assets to shareholders other than under a normal cash dividend. The 2001 Stock Plan remains in effect until terminated by action of the Board or operation of law.

#### **Federal Income Tax Consequences Relating to the 2001 Stock Plan, as Amended and Restated**

The U.S. federal income tax consequences to the Company and its employees of awards under the 2001 Stock Plan are complex and subject to change. The following discussion is only a summary of the general rules applicable to the 2001 Stock Plan.

Recipients of awards under the 2001 Stock Plan should consult their own tax advisors since a taxpayer's particular situation may be such that some variation of the rules described below will apply.

As discussed above, several different types of instruments may be issued under the Stock Plan. The tax consequences related to the issuance of each is discussed separately below.

**Options.** As noted above, options granted under the 2001 Stock Plan may be either incentive stock options or nonqualified stock options. Incentive stock options are options which are designated as such by the Company and which meet certain requirements under Section 422 of the Code and the regulations thereunder. Any option that does not satisfy these requirements will be treated as a nonqualified stock option.

**Incentive Stock Options.** If an option granted under the 2001 Stock Plan is treated as an incentive stock option, the optionee will not recognize any income upon either the grant or the exercise of the option, and the Company will not be allowed a deduction for federal tax purposes. Upon a sale of the shares, the tax treatment to the optionee and the Company will depend primarily upon whether the optionee has met certain holding period requirements at the time he or she sells the shares. In addition, as discussed below, the exercise of an incentive stock option may subject the optionee to alternative minimum tax liability.

If an optionee exercises an incentive stock option and does not dispose of the shares received within two years after the date such option was granted or within one year after the transfer of the shares to him or her, any gain realized upon the disposition will be characterized as long-term capital gain and, in such case, the Company will not be entitled to a federal tax deduction.

If the optionee disposes of the shares either within two years after the date the option is granted or within one year after the transfer of the shares to him or her, such disposition will be treated as a disqualifying disposition and an amount equal to the lesser of (1) the fair market value of the shares on the date of exercise minus the exercise price, or (2) the amount realized on the disposition minus the exercise price, will be taxed as ordinary income to the optionee in the taxable year in which the disposition occurs. (However, in the case of gifts, sales to related parties, and certain other transactions, the full difference between the fair market value of the stock and the purchase price will be treated as compensation income.) The excess, if any, of the amount realized upon disposition over the fair market value at the time of the exercise of the option will be treated as long-term capital gain if the shares have been held for more than one year following the exercise of the option. In the event of a disqualifying disposition, the Company may withhold income taxes from the optionee's compensation with respect to the ordinary income realized by the optionee as a result of the disqualifying disposition.

The exercise of an incentive stock option may subject an optionee to alternative minimum tax liability. The excess of the fair market value of the shares at the time an incentive stock option is exercised over the purchase price of the shares is included in income for purposes of the alternative minimum tax even though it is not included in taxable income for purposes of determining the regular tax liability of an employee. Consequently, an optionee may be obligated to pay alternative minimum tax in the year he or she exercises an incentive stock option.

In general, there will be no federal income tax deductions allowed to the Company upon the grant, exercise, or termination of an incentive stock option. However, if an optionee sells or otherwise disposes of stock received on the exercise of an incentive stock option in a disqualifying disposition, the Company will be entitled to a deduction for federal income tax purposes in an amount equal to the ordinary income, if any, recognized by the optionee upon disposition of the shares, provided that the deduction is not otherwise disallowed under the Code.

**Nonqualified Stock Options.** Nonqualified stock options granted under the 2001 Stock Plan do not qualify as "incentive stock options" and will not qualify for any special tax benefits to the optionee. An optionee generally will not recognize any taxable income at the time he or she is granted a nonqualified option. However, upon its exercise, the optionee will recognize ordinary income for federal tax purposes measured by the excess of the then fair market value of the shares over the exercise price. The income realized by the optionee will be subject to income and other employee withholding taxes.

The optionee's basis for determination of gain or loss upon the subsequent disposition of shares acquired upon the exercise of a nonqualified stock option will be the amount paid for such shares plus any ordinary income recognized as a result of the exercise of such option. Upon disposition of any shares acquired pursuant to the exercise of a nonqualified stock option, the difference between the sale price and the optionee's basis in the shares will be treated as a capital gain or loss and generally will be characterized as long-term capital gain or loss if the shares have been held for more than one year at their disposition.

In general, there will be no federal income tax deduction allowed to the Company upon the grant or termination of a nonqualified stock option or a sale or disposition of the shares acquired upon the exercise of a nonqualified stock option. However, upon the exercise of a nonqualified stock option, the Company will be entitled to a deduction for federal income tax purposes equal to the amount of ordinary income that an optionee is required to recognize as a result of the exercise, provided that the deduction is not otherwise disallowed under the Code.

**Stock Awards.** Generally, the recipient of a stock award will recognize ordinary compensation income at the time the Company's common stock associated with the stock award is received in an amount equal to the excess, if any, of the fair market value of the stock received over any amount paid by the recipient in exchange for the stock. If, however, the stock is non-vested (i.e., if the employee is required to work for a period of time in order to have the right to sell the stock) when it is received under the 2001 Stock Plan and the recipient had not elected otherwise, the recipient generally will not recognize income until the stock becomes vested, at which time the recipient will recognize ordinary compensation income equal to the excess, if any, of the fair market value of the stock on the date it becomes vested over any amount paid by the recipient in exchange for the stock. The income realized by the recipient will generally be subject to U.S. income and employment taxes.

In the case of stock awards that take the form of the Company's unfunded and unsecured promise to issue common stock at a future date, the grant of this type of stock award is not a taxable event to the recipient because it constitutes an unfunded and unsecured promise to issue shares of Company common stock at a future date. Once this type of stock award vests and the recipient receives the Company common shares, the tax rules discussed in the previous paragraph will apply to receipt of such shares.

The recipient's basis for determination of gain or loss upon the subsequent disposition of shares acquired as stock awards will be the amount paid for such shares plus any ordinary income recognized either when the stock is received or when the stock becomes vested, as applicable. Upon the disposition of any stock received as a stock award under the 2001 Stock Plan, the difference between the sale price and the recipient's basis in the shares will be treated as a capital gain or loss and generally will be characterized as long-term capital gain or loss if, at the time of disposition, the shares have been held for more than one year since the recipient recognized compensation income with respect to such shares.

If a recipient of a stock award receives the cash equivalent of Company common stock (in lieu of actually receiving Company common stock), the recipient will recognize ordinary compensation income at the time of the receipt of such cash in the amount of the cash received.

In the year that the recipient of a stock award recognizes ordinary taxable income in respect of such award, the Company will be entitled to a deduction for federal income tax purposes equal to the amount of ordinary income that the recipient is required to recognize, provided that the deduction is not otherwise disallowed under the Code.

**Stock Appreciation Rights.** As discussed above, the Company may grant either Stand-Alone SARs or Tandem SARs under the 2001 Stock Plan. Generally, the recipient of a Stand-Alone SAR will not recognize any taxable income at the time the Stand-Alone SAR is granted.

With respect to Stand-Alone SARs, if the employee receives the appreciation inherent in the SARs in cash, the cash will be taxable as ordinary compensation income to the employee at the time that it is received. If the employee receives the appreciation inherent in the Stand-Alone SARs in stock, the employee will recognize ordinary compensation income equal to the excess of the fair market value of the stock on the day it is received over any amounts paid by the employee for the stock.

With respect to Tandem SARs, if a holder elects to surrender the underlying option in exchange for cash or stock equal to the appreciation inherent in the underlying option, the tax consequences to the employee will be the same as discussed above relating to Stand-Alone SARs. If the employee elects to exercise the underlying option, the holder will be taxed at the time of exercise as if he or she had exercised a nonqualified stock option (discussed above), i.e., the employee will recognize ordinary income for federal tax purposes measured by the excess of the then fair market value of the shares over the exercise price.

In general, there will be no federal income tax deduction allowed to the Company upon the grant or termination of Stand-Alone SARs or Tandem SARs. However, upon the exercise of either a Stand-Alone SAR or a Tandem SAR, the Company will be entitled to a deduction for federal income tax purposes equal to the amount of ordinary income that the employee is required to recognize as a result of the exercise, provided that the deduction is not otherwise disallowed under the Code.

## **Description of the 1991 Plan, as Amended and Restated, Subject to Shareholder Approval**

*General.* No new options may be granted under the 1991 Plan. Effective January 1, 2001, all shares available for future awards, and all shares that are represented by awards that are forfeited, expire or are canceled without delivery of shares or otherwise result in the return of shares to the Company were transferred to the 2001 Stock Plan. Outstanding options under the 1991 Plan are eligible for adjustment in the event of certain events as described below.

The purposes of the 1991 Plan were to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to recipients, and to promote the success of Microsoft's business by aligning employee financial interests with long-term shareholder value. Awards granted under the 1991 Plan could be either "incentive stock options," as defined in Section 422 of the Internal Revenue Code ("Code"), or nonqualified stock options.

*Administration.* The 1991 Plan is administered by the Board or the Compensation Committee of the Board.

*Plan Benefits.* Because benefits under the 1991 Plan will depend on the Committee's actions and the fair market value of common stock at various future dates, it is not possible to determine the benefits that will be received by officers and other employees under the 1991 Plan.

*Eligibility.* Options under the 1991 Plan could be granted only to employees of the Company or a parent or subsidiary. The Committee, in its discretion, selected the individuals to whom options were granted, the time or times when such options were granted, and the number of shares subject to each grant.

*Shares Subject to the 1991 Plan.* The total number of shares of Company common stock that were authorized to be awarded and delivered upon the exercise of options under the 1991 Plan was 4,160,000,000, as adjusted for stock splits. Effective January 1, 2001, all shares available for future awards under the 1991 Plan, and all shares under the 1991 Plan that are represented by awards that are forfeited, expire or are canceled without delivery of shares or otherwise result in the return of shares to the Company were transferred to the 2001 Stock Plan.

*Limitations.* The maximum aggregate number of Company common shares with respect to which an option or options could be granted to any employee in any one taxable year was 16,000,000 shares.

*Terms and Conditions of Options.* Each option was evidenced by a written option agreement, which designated the option as either an incentive stock option or a nonqualified stock option, and was subject to the following additional terms and conditions:

*Exercise Price.* The Board or Committee determined the exercise price for the shares of common stock underlying each option at the time the option was granted. The exercise price for shares under an incentive stock option may not be less than 100% of the fair market value of the common stock on the date such option is granted. The fair market value price for a share of Company common stock underlying each award was the closing price per share on Nasdaq on the date the award was granted.

The closing price for one share of Microsoft common stock on September 14, 2004 was \$27.44. No award may be repriced, replaced, regranted through cancellation, or modified without shareholder approval (except in connection with a change in the Company's capitalization or similar event), if the effect would be to reduce the exercise price for the shares underlying such award.

*Exercise of Award; Form of Consideration.* The Board or Committee determined when options were to become exercisable. The means of payment, if any, for shares issued upon exercise of an option were specified in each option agreement. The 1991 Plan permitted payment to be made by cash, check, broker-assisted same day sales, and, in the case of certain executive officers, by delivery of other shares of Company stock. The optionee is required to pay the Company, prior to the issuance of shares upon exercise of an option, any applicable federal, state, and local withholding obligations of the Company. Certain executives of the Company may elect to pay their withholding obligations by having shares withheld.

*Term of Option.* The term of an option may be no more than 10 years from the date of grant. No option may be exercised after the expiration of its term. Except as provided below, any option must be exercised within three months (or such shorter period specified in the grant) following termination of the optionee's employment.

**Death or Disability.** If an optionee's employment terminates as a result of his or her death or total and permanent disability, then his or her options will vest to the extent of any vesting that would have occurred within the following 12 months had the employment continued. Following death, an option may be exercised, to the extent vested and not expired, within the 6-month period following the optionee's death by his or her estate or by the person who acquires the exercise right by bequest or inheritance. Following total and permanent disability, an option may be exercised, to the extent vested and not expired, within the 18-month period following the date the optionee ceased working.

**Nontransferability of Options.** Unless otherwise determined by the Board or Committee, options granted under the 1991 Plan are not transferable other than by will or the laws of descent and distribution and may be exercised during the optionee's lifetime only by the optionee.

**Other Provisions.** An option agreement may contain other terms and provisions consistent with the 1991 Plan, as may be determined by the Board or Committee.

**Adjustments to Shares Subject to the Plan.** If any change is made to the Company's common shares by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding shares as a class without the Company's receipt of consideration, appropriate adjustments shall be made to (i) the maximum number and/or class of securities issuable under the Plan, (ii) the number and/or class of securities and/or the price per share covered by outstanding options under the Plan, and (iii) the maximum annual employee grant. Such adjustments may also be made in the event of any distribution of assets to shareholders other than a normal cash dividend. In determining adjustments to be made under these provisions, the Board may take into account such factors as it deems appropriate. Any such adjustments to outstanding options will be effected in a manner that precludes the enlargement of rights and benefits under such options. In the event of a liquidation or dissolution of the Company, any unexercised options will terminate immediately prior to the proposed action unless otherwise determined by the Board. In the event of the sale of substantially all assets of the Company or a merger with or into another corporation, each award shall be assumed or an equivalent award shall be substituted by the successor corporation or a parent or subsidiary of the successor corporation or, if not assumed, shall be fully vested.

**Amendment and Termination of the 1991 Plan.** The Board may amend or terminate the 1991 Plan, or any part thereof, at any time and for any reason. However, the Company shall obtain shareholder approval or ratification for any increase in the number of shares subject to the Plan (other than in connection with the adjustment provisions of the Plan). No such action by the Board or shareholders may affect any option already granted without the written agreement of the optionee; provided that the consent of an optionee is not necessary for a modification or amendment of the option, or the acceleration or deferral of the option's vesting or exercise, that in the reasonable judgment of the Board confers a benefit on the optionee or is made in connection with the 1991 Plan's provisions for adjustment of shares in the event of changes to the shares underlying the option or the distribution of assets to shareholders other than under a normal cash dividend.

#### **Federal Income Tax Consequences Relating to the 1991 Plan, as Amended and Restated**

A summary of the U.S. federal income tax consequences of incentive and nonqualified stock options under the 1991 Plan is set forth above under the description of the 2001 Stock Plan.

#### **Vote Required and Board Recommendation**

The affirmative vote of holders of a majority of the shares of common stock represented at the meeting is required to approve the amendments to the 2001 Stock Plan and the 1991 Plan. **THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE PROPOSAL.**

### **3. PROPOSAL FOR APPROVAL OF AMENDMENTS TO THE 1999 STOCK PLAN FOR NON-EMPLOYEE DIRECTORS, THE STOCK OPTION PLAN FOR NON-EMPLOYEE DIRECTORS, AND THE STOCK OPTION PLAN FOR CONSULTANTS AND ADVISORS**

Following the conditional declaration of the special dividend on July 20, 2004, the Board amended the 1999 Stock Plan for Non-Employee Directors (the "1999 Director Plan"), the Stock Option Plan for Non-Employee Directors (the "Original Director Plan") and the Stock Option Plan for Consultants and Advisors (the "Consultants and Advisors Plan"), subject to shareholder approval. If these amendments are approved, the Board will have the authority to adjust awards under those plans in connection with any distribution of assets other than a normal cash dividend and, if Proposal 2 is also approved,

the adjustments approved by the Board to awards under the 1999 Director Plan, the Original Director Plan, and the Consultants and Advisors Plan will occur on the ex-dividend date for the special dividend, as described in "Information Regarding Proposals 2 and 3" above.

### **Proposed Amendments**

The Board has adopted amendments to the 1999 Director Plan, the Original Director Plan, and the Consultants and Advisors Plan similar to the amendments to the adjustment provisions described in the discussion of Proposal 2. Microsoft proposes to restate the adjustment provisions of the 1999 Director Plan, the Original Director Plan and the Consultants and Advisors Plan to permit the Board to adjust awards under the plans, any numeric grant limitations in the plans, and the number of shares covered by the plans in the event of any distribution of assets other than a normal cash dividend, in a manner similar to the amendments to the 2001 Stock Plan.

For the reasons described under "Information Regarding Proposals 2 and 3," which begins on page 16 of this proxy statement, the Board has adopted resolutions approving, and recommending to the shareholders for their approval, amendments to the 1999 Director Plan, the Original Director Plan and the Consultants and Advisors Plan. Each amended plan also includes related changes to implement the effect of the revisions to the adjustment provisions.

Shareholders should be aware that since the approval of the amended and restated 1999 Director Plan at the 2003 Annual Meeting of Shareholders, the Board has added a requirement that all awards under that plan must contain a minimum three year vesting period from the date of grant, excluding awards granted in lieu of cash compensation. This change was made to have the terms of the 1999 Director Plan better reflect the intended usage of the plan by the Company, and is now part of the 1999 Director Plan whether or not this resolution is adopted.

The principal provisions of the plans are summarized below. These summaries are qualified in their entirety by reference to the actual plans, copies of which are attached to the electronic copy of this Proxy Statement filed with the SEC and may be accessed from the SEC's home page ([www.sec.gov](http://www.sec.gov)). In addition, a copy of the 1999 Director Stock Plan, the Director Stock Option Plan and the Consultants and Advisors Plan, each as amended and restated, for which shareholder approval is being sought may be obtained upon written request to: Investor Relations Department, Microsoft Corporation, One Microsoft Way, Redmond, WA 98052.

### **Description of the 1999 Director Plan, as Amended and Restated, Subject to Shareholder Approval**

*General.* The purpose of the 1999 Director Plan is to attract and retain the services of experienced and knowledgeable non-employee directors for the benefit of Microsoft and its shareholders and to provide additional incentive for those directors to continue to work for the best interests of the Company and its shareholders through continuing ownership of the Company's common stock.

*Administration.* The Board of Directors has authority to grant awards to non-employee directors and is responsible for the general administration and interpretation of the 1999 Director Plan.

*Plan Benefits.* Because benefits under the 1999 Director Plan will depend on the Board's actions and the fair market value of common stock at various future dates, it is not possible to determine the benefits that will be received by current non-employee directors if the amendments to the 1999 Director Plan are approved by the shareholders. In the fiscal year ended June 30, 2004, stock awards for an aggregate of 32,000 shares of the Company's common stock were granted to non-employee directors. The closing price of Microsoft common stock on September 14, 2004 was \$27.44.

*Eligibility.* Each director who is not, and has not been during the immediately preceding 12-month period, an employee of the Company or any subsidiary of the Company is eligible to participate in the 1999 Director Plan. The Board has the discretion to determine that one or more directors will not be eligible for a specified year or for an indefinite period.

*Shares Subject to the 1999 Director Plan.* An aggregate of 3,500,000 shares of common stock have been reserved for issuance under the 1999 Director Plan. The plan provides for the grant of both stock options and stock awards, which are referred to collectively in the plan as "awards".

*Limitations.* Each eligible non-employee director will be eligible to receive an award of up to 10,000 shares on an annual basis. Each of the seven continuing non-employee directors of the Company will be eligible to receive these discretionary awards in fiscal year 2005. The 1999 Director Plan permits the Company to grant awards to each new non-employee director at the time of his or her initial election to the Board, for up to 25,000 shares. Each award, other than an award granted in lieu of cash compensation, shall vest over a period of not less than three (3) years from the date of grant.



**Options.** The exercise price and vesting schedule for all options granted under the 1999 Director Plan will be set by the Board in its discretion. Options granted under the 1999 Director Plan will become fully exercisable if the director ceases to serve on the Board for any reason within one year following any Change in Control of the Company (as defined in the 1999 Director Plan). Options may be exercised only while the option holder is a director of the Company, within 180 days after the date the option holder terminates as a director, or within 180 days after the death of the option holder. During the option holder's lifetime, an option is exercisable only by the option holder. Options are not transferable except upon the death of the option holder, or as the Board of Directors may otherwise permit. At the date of exercise, the option holder may pay the full option price in cash or in shares of common stock previously acquired by the option holder valued at fair market value. Upon exercise of an option, the number of shares subject to the option and the number of shares available under the 1999 Director Plan for future option grants are reduced by the number of shares with respect to which the option is exercised.

**Stock Awards.** Stock awards may be granted either alone, in addition to, or in tandem with other awards granted under the 1999 Director Plan. After the Board of Directors determines that it will offer a stock award, the Company will advise the director in writing or electronically, by means of an award agreement, of the terms, conditions and restrictions, including vesting, if any, related to the offer, including the number of shares that the director will be entitled to receive or purchase, the price to be paid, if any, and, if applicable, the time within which the director must accept the offer. Unless the Board of Directors determines otherwise, the award agreement will provide for the forfeiture of the non-vested shares underlying the stock award upon the director ceasing to be a director for any reason, including death. To the extent that the director purchased the shares granted under the stock award and any such shares remain non-vested at the time the director ceases to be a director, the cessation of director status will cause an immediate sale of such non-vested shares to the Company at the original price per share paid by the director. Stock awards granted under the 1999 Director Plan will become fully vested and nonforfeitable if the director ceases to serve on the Board for any reason within one year following any Change in Control of the Company (as defined in the 1999 Director Plan).

**Termination and Amendment.** Unless it is terminated sooner, the 1999 Director Plan will terminate on November 10, 2009. The Board of Directors may at any time terminate the 1999 Director Plan or make any modification or amendment that it deems advisable; provided, however, that shareholder approval will be required for any amendment that will (a) increase the total number of shares as to which awards may be granted under the 1999 Director Plan, (b) modify the class of persons eligible to receive awards, or (c) otherwise require shareholder approval under any applicable law or regulation. In addition, the Board of Directors will not amend the provisions in the 1999 Director Plan regarding the amount, pricing, and timing for grants pursuant to the 1999 Director Plan more than once every six months, other than to comport with changes in the Internal Revenue Code or the rules thereunder. Termination or any modification or amendment of the 1999 Director Plan will not, without the consent of an award holder, affect his or her rights under an award previously granted to him or her; provided that the consent of an awardee is not necessary for a modification or amendment of the award, or the acceleration or deferral of the award's vesting or exercise, that in the reasonable judgment of the Board confers a benefit on the awardee or is made in connection with the 1999 Director Plan's provisions for adjustment of shares in the event of changes to the shares underlying the award or the distribution of assets to shareholders other than under a normal cash dividend.

**Adjustments to Shares Subject to the Plan.** If any change is made to the Company's common shares by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding shares as a class without the Company's receipt of consideration, appropriate adjustments shall be made to (i) the maximum number and/or class of securities issuable under the Plan, (ii) the number and/or class of securities and/or the price per share covered by outstanding awards under the Plan, and (iii) the limits on the size of individual awards under the Plan. Such adjustments may also be made in the event of any distribution of assets to shareholders other than a normal cash dividend. In determining adjustments to be made under these provisions, the Board may take into account such factors as it deems appropriate. Any such adjustments to outstanding awards will be effected in a manner that precludes the enlargement of rights and benefits under such awards. In the event of a liquidation or dissolution of the Company, any unexercised awards will terminate immediately prior to the proposed action unless otherwise determined by the Board. In the event of the sale of substantially all assets of the Company or a merger with or into another corporation, each award shall be assumed or an equivalent award shall be substituted by the successor corporation or a parent or subsidiary of the successor corporation or, if not assumed, shall be fully vested.



## **Federal Income Tax Consequences Relating to the 1999 Director Plan, as Amended and Restated**

The U.S. federal income tax consequences to the Company and recipients of awards under the 1999 Director Plan are complex and subject to change. The following discussion is only a summary of the general rules applicable to the 1999 Director Plan. Recipients of awards under the 1999 Director Plan should consult their own tax advisors since a taxpayer's particular situation may be such that some variation of the rules described below will apply.

As discussed above, several different types of instruments may be issued under the 1999 Director Plan. The tax consequences related to the issuance of each is discussed separately below.

**Nonqualified Stock Options.** Options granted under the 1999 Director Plan are nonqualified stock options. Except for the fact that income recognized by the optionee upon the exercise of nonqualified stock options granted under the 1999 Director Plan will not be subject to income or other employee withholding taxes, the federal income tax consequences to optionees and the Company with respect to options granted under the 1999 Director Plan are the same as those applicable to employees and the Company with respect to nonqualified stock options granted under the 2001 Stock Plan. These tax consequences are discussed above in the discussion of Proposal 2 under the heading "Federal Income Tax Consequences Relating to the 2001 Stock Plan, as Amended and Restated" and under the sub-heading "Nonqualified Stock Options."

**Stock Awards.** Except for the fact that income realized by the recipient of Company common stock upon the vesting of a stock award granted under the 1999 Director Plan will not be subject to U.S. income or other employee withholding taxes, the federal income tax consequences to recipients and the Company with respect to stock awards granted under the 1999 Director Plan are the same as those applicable to recipients and the Company with respect to stock awards granted under the Stock Plan. These tax consequences are discussed above in the discussion of Proposal 2 under the heading "Federal Income Tax Consequences Relating to the 2001 Stock Plan, as Amended and Restated" and under the sub-heading "Stock Awards," provided that, for purposes of the 1999 Director Plan, stock will be viewed as non-vested if the director is required to continue to serve as a director for a period of time in order to have the right to sell the stock.

## **Description of the Original Director Plan, as Amended and Restated, Subject to Shareholder Approval**

**General.** No new options may be granted under the Original Director Plan. Outstanding options under the Original Director Plan are eligible for adjustment in the event of certain events as described below.

The purpose of the Original Director Plan was to attract and retain the services of experienced and knowledgeable non-employee directors for the benefit of Microsoft and its shareholders and to provide additional incentive for such directors to continue to work for the best interests of the Company and its shareholders through continuing ownership of the Company's common stock.

**Administration.** The Board of Directors is responsible for the general administration and interpretation of the Original Director Plan.

**Plan Benefits.** Because benefits under the Original Director Plan will depend on the Board's actions and the fair market value of common stock at various future dates, it is not possible to determine the benefits that will be received under the Original Director Plan.

**Eligibility.** Under the Original Director Plan, a director was eligible for grants if he or she: was not an employee of the Company or any subsidiary during the preceding 12 months; did not own any common stock of the Company acquired directly from the Corporation and subject to any contractual forfeiture or mandatory resale to the Corporation on the occurrence of certain specified events; and did not hold any unvested stock options to purchase common stock of the Company, except for non-discretionary stock options previously granted pursuant to the Original Director Plan.

**Shares Subject to the Original Director Plan.** An aggregate of 36,000,000 shares of common stock (as adjusted for stock splits) were reserved for issuance under the Original Director Plan. No additional shares may be issued under the Original Director Plan; however, outstanding awards may be adjusted as described below under "Adjustments to Shares Subject to the Plan."

**Limitations.** Each eligible non-employee director received a nondiscretionary option grant of 5,000 shares on an annual basis and was eligible for discretionary grants of up to 50,000 shares of common stock to each new non-employee director at the time of his or her initial election to the Board.

**Options.** The exercise price for a nondiscretionary option grant was set at the fair market value of the underlying shares on the date of grant, and a nondiscretionary option grant vested in full on the first anniversary of the date of grant. The exercise price and vesting schedule for discretionary grants of options under the Original Director Plan were set by the Board in its discretion. Options granted under the Original Director Plan will become fully exercisable if the director ceases to serve on the Board for any reason within one year following any Change in Control of the Company (as defined in the Original Director Plan). Options may be exercised only while the option holder is a director of the Company, within 30 days after the date the option holder terminates as a director, or within 180 days after the death of the option holder. During the option holder's lifetime, an option is exercisable only by the option holder. Options are not transferable except upon the death of the option holder, or as the Board of Directors may otherwise permit. At the date of exercise, the option holder may pay the full option price in cash or in shares of Company common stock previously acquired by the option holder valued at fair market value.

**Termination and Amendment.** The Board of Directors may at any time terminate the Original Director Plan or make any modification or amendment that it deems advisable; provided, however, that shareholder approval will be required for any amendment that will (a) increase the total number of shares as to which awards may be granted under the Original Director Plan, (b) modify the class of persons eligible to receive awards, or (c) otherwise require shareholder approval under any applicable law or regulation. In addition, the Board of Directors will not amend the provisions in the Original Director Plan regarding the amount, pricing, and timing for grants pursuant to the Original Director Plan more than once every six months, other than to comport with changes in the Internal Revenue Code, the Employee Retirement Income Security Act, or the rules thereunder. Termination or any modification or amendment of the Original Director Plan will not, without the consent of an award holder, affect his or her rights under an award previously granted to him or her; provided that the consent of an optionee is not necessary for a modification or amendment of the option, or the acceleration or deferral of the option's vesting or exercise, that in the reasonable judgment of the Board confers a benefit on the optionee or is made in connection with the Original Director Plan's provisions for adjustment of shares in the event of changes to the shares underlying the option or the distribution of assets to shareholders other than under a normal cash dividend.

**Adjustments to Shares Subject to the Plan.** If any change is made to the Company's common shares by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding shares as a class without the Company's receipt of consideration, appropriate adjustments shall be made to (i) the maximum number and/or class of securities issuable under the Plan, and (ii) the number and/or class of securities and/or the price per share covered by outstanding awards under the Plan. Such adjustments may also be made in the event of any distribution of assets to shareholders other than a normal cash dividend. In determining adjustments to be made under these provisions, the Board may take into account such factors as it deems appropriate. Any such adjustments to outstanding options will be effected in a manner that precludes the enlargement of rights and benefits under such options. In the event of a liquidation or dissolution of the Company, any unexercised awards will terminate immediately prior to the proposed action unless otherwise determined by the Board. In the event of the sale of substantially all assets of the Company or a merger with or into another corporation, each award shall be assumed or an equivalent award shall be substituted by the successor corporation or a parent or subsidiary of the successor corporation or, if not assumed, shall be fully vested.

#### **Federal Income Tax Consequences Relating to the Original Director Plan, as Amended and Restated**

The U.S. federal income tax consequences of nonqualified stock options, like those granted under the Original Director Plan, are set forth under the description of the Company's 1999 Stock Plan for Non-Employee Directors.

#### **Description of the Consultants and Advisors Plan, as Amended and Restated, Subject to Shareholder Approval**

**General.** No new options may be granted under the Consultants and Advisors Plan. Outstanding options under the Consultants and Advisors Plan are eligible for adjustment if certain events occur as described below.

The purposes of the Consultants and Advisors Plan were to attract and maintain a long-term relationship with best available consultants and advisors, to provide additional incentive to such individuals, and to promote the success of Microsoft's business. Options granted under the Consultants and Advisors Plan were nonqualified stock options evidenced by written stock option agreements.

*Administration.* The Consultants and Advisors Plan is administered by the Board or the Compensation Committee of the Board.

*Plan Benefits.* Because benefits under the Consultants and Advisors Plan will depend on the Committee's actions and the fair market value of common stock at various future dates, it is not possible to determine the benefits that will be received.

*Eligibility.* Options under the Consultants and Advisors Plan could be granted only to consultants and advisors who provided consulting services to the Company. The Board or Committee, in their discretion, selected the individuals to whom options were granted, the time or times when such options were granted, and the number of shares subject to each grant.

*Shares Subject to the Consultants and Advisors Plan.* The total number of shares of Company common stock that were authorized to be awarded and delivered upon the exercise of options under the Consultants and Advisors Plan was 4,800,000, as adjusted for stock splits. No additional shares may be issued under the Consultants and Advisors Plan; however, outstanding awards may be adjusted as described above under "Adjustments to Shares Subject to the Plan."

*Terms and Conditions of Options.* Each option was subject to the following additional terms and conditions:

*Exercise of Option; Form of Consideration.* The Board or Committee determined when options were to become exercisable. The means of payment, if any, for shares issued upon exercise of an option were specified in each option agreement. The Consultants and Advisors Plan permitted payment to be made by cash, check or broker assisted same day sales.

*Term of Option.* The term of an option may be no more than 10 years from the date of grant. No option may be exercised after the expiration of its term. Except as provided below, any option must be exercised within three months (or such shorter period specified in the grant) following termination of the optionee's continuous status as a consultant or advisor.

*Death or Disability.* If an optionee's continuous status as consultant or advisor terminates as a result of his or her death, his or her options may be exercised, to the extent vested and not expired, within the 6-month period following the optionee's death by his or her estate or by the person who acquires the exercise right by bequest or inheritance. If an optionee's continuous status as consultant or advisor terminates as a result of his or her total and permanent disability, an option may be exercised, to the extent vested and not expired, within the 18-month period following the date the optionee ceased working.

*Nontransferability of Options.* Unless otherwise determined by the Board or Committee, options granted under the Consultants and Advisors Plan are not transferable other than by will or the laws of descent and distribution and may be exercised during the optionee's lifetime only by the optionee.

*Other Provisions.* An option agreement may contain other terms and provisions consistent with the Consultants and Advisors Plan, as may be determined by the Board or Committee.

*Adjustments to Shares Subject to the Plan.* If any change is made to the Company's common shares by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding shares as a class without the Company's receipt of consideration, appropriate adjustments shall be made to (i) the maximum number and/or class of securities issuable under the Plan and (ii) the number and/or class of securities and/or the price per share covered by outstanding options under the Plan. Such adjustments may also be made in the event of any distribution of assets to shareholders other than a normal cash dividend. In determining adjustments to be made under these provisions, the Board may take into account such factors as it deems appropriate. Any such adjustments to outstanding options will be effected in a manner that precludes the enlargement of rights and benefits under such options. In the event of a liquidation or dissolution of the Company, any unexercised options will terminate immediately prior to the proposed action unless otherwise determined by the Board. In the event of the sale of

substantially all assets of the Company or a merger with or into another corporation, each option shall be assumed or an equivalent award shall be substituted by the successor corporation or a parent or subsidiary of the successor corporation or, if not assumed, shall be fully vested.

*Amendment and Termination of the Consultants and Advisors Plan.* The Board may amend or terminate the Consultants and Advisors Plan, or any part thereof, at any time and for any reason. No such action by the Board may affect any option already granted without the written mutual agreement of the optionee and the Board; provided that the consent of an optionee is not necessary for a modification or amendment or the option, or the acceleration or deferral of the option's vesting or exercise, that in the reasonable judgment of the Board confers a benefit on the optionee or is made in connection with the Consultants and Advisors Plan's provisions for adjustment of shares in the event of changes to the shares underlying the option or the distribution of assets to shareholders other than under a normal cash dividend.

#### **Federal Income Tax Consequences Relating to the Consultants and Advisors Plan, as Amended and Restated**

The U.S. federal income tax consequences of nonqualified stock options, like those granted under the Consultants and Advisors Plan, are set forth under the description of the Company's 1999 Stock Plan for Non-Employee Directors.

#### **Vote Required and Board Recommendation**

Approval of the amendments to the 1999 Director Plan, the Original Director Plan and the Consultants and Advisor Plan requires more votes in favor of approval of the amendments than those against approval. **THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE PROPOSAL.**

#### **4. PROPOSAL FOR APPROVAL OF MATERIAL TERMS OF THE PERFORMANCE CRITERIA UNDER THE 2001 STOCK PLAN**

Shareholders are being asked to approve the material terms of the performance goals that may apply to awards under the 2001 Stock Plan. This approval is necessary to preserve Microsoft's federal income tax deduction for performance-based compensation paid to certain executive officers under Section 162(m) of the Internal Revenue Code.

#### **Background**

Section 162(m) imposes an annual deduction limit of \$1 million on the amount of compensation paid to each of the chief executive officer and the four other highest compensated officers. The deduction limit does not apply to performance-based compensation that satisfies the requirements of Section 162(m). The requirements of Section 162(m) for performance-based compensation include shareholder approval of the material terms of the performance goals under which the compensation is paid. The material terms include (1) the employees eligible to receive compensation upon attainment of a goal, (2) the business criteria on which the goals may be based, and (3) the maximum amount payable to an employee upon attainment of a goal.

Awards under the 2001 Stock Plan may be granted to employees and consultants of the Company and its subsidiaries and affiliates, and to persons to whom offers of employment have been made.

Under the 2001 Stock Plan, awards may, but need not, be subject to the satisfaction of one or more performance goals. Performance goals for awards will be determined by the Compensation Committee and will be designed to support the business strategy and align executives' interests with customer and shareholder interests. For awards that are intended to qualify as performance-based compensation under Section 162(m), performance goals will be based on one or more of the following business criteria: sales or licensing volume, revenues, customer satisfaction, expenses, organizational health/productivity, earnings (which includes similar measurements such as net profits, operating profits and net income, and which may be calculated before or after taxes, interest, depreciation, amortization or taxes), margins, cash flow, shareholder return, return on equity, assets, or investments, working capital, product shipments, product releases, brand or product recognition/acceptance, or stock price.

Achievement of the goals may be measured:

- individually, alternatively, or in any combination;

- with respect to Microsoft, a subsidiary, division, business unit, product line, product, or any combination of the foregoing;
- on an absolute basis, or relative to a target, to a designated comparison group, to results in other periods, or to other external measures; and
- including or excluding items that could affect the measurement, such as extraordinary or unusual and nonrecurring gains or losses, litigation or claim judgments or settlements, material changes in tax laws, acquisitions, divestitures, the cumulative effect of accounting changes, asset write-downs, restructuring charges, or the results of discontinued operations.

The section of this proxy statement titled "Information Regarding Executive Officer Compensation — Long-Term Incentive Plans — Awards in Last Fiscal Year," describes the performance goals under the 2003 shared performance stock award program.

Under the 2001 Stock Plan, stock award grants for any participant are limited to 5,000,000 shares of common stock in each taxable year of the Company, and this limit also applies to stock awards that are subject to the satisfaction of performance goals.

A description of the 2001 Stock Plan is set forth in Proposal 2 of this proxy statement.

### Vote Required and Board Recommendation

The affirmative vote of holders of a majority of the shares of common stock represented at the meeting is required to approve this proposal. **THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE PROPOSAL.**

### EQUITY COMPENSATION PLAN INFORMATION

(In millions, except per share amounts)

June 30, 2004

|   | (a)  | (b)  | (c)  |
|---|--|--|--|
| Plan category   | Number of securities to be issued upon exercise of outstanding options, warrants and rights <sup>(1)</sup> | Weighted-average exercise price of outstanding options, warrants and rights <sup>(2)</sup> | Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) <sup>(3)</sup> |
| Equity compensation plans approved by security holders                    | 1,013.5  | \$ 29.15   | 982.4  |
| Equity compensation plans not approved by security holders <sup>(4)</sup> | 0.2  | 18.28  | 0  |
| Total <sup>(5)</sup>  | 1,013.7  | \$ 29.14   | 982.4  |

(1) Includes 34.5 million shares issuable upon vesting of outstanding stock awards granted under the 2001 Stock Plan and 30.5 million shares issuable under outstanding shared performance stock awards granted under the 2001 Stock Plan (assuming target performance).

(2) The weighted-average exercise price does not take into account the shares issuable upon vesting of outstanding stock awards or the shares issuable under outstanding shared performance stock awards, which have no exercise price.

(3) Includes 175.5 million shares remaining available for issuance as of June 30, 2004 under the 2003 Employee Stock Purchase Plan.

(4) The Microsoft Stock Option Plan for Consultants and Advisors authorized the grant of stock options to consultants and advisors to the Company. No additional options may be granted under this plan.

(5) Does not include options to purchase an aggregate of 0.7 million shares, at a weighted average exercise price of \$32.39, granted under a plan assumed in connection with an acquisition transaction. No additional options may be granted under this assumed plan.

## 5. RATIFICATION OF INDEPENDENT AUDITOR

The Audit Committee has selected Deloitte & Touche LLP as the Company's independent auditor for the current fiscal year, and the Board is asking shareholders to ratify that selection. Although current law, rules, and regulations, as well as the charter of the Audit Committee, require the Company's independent auditor to be engaged, retained, and supervised by the Audit Committee, the Board considers the selection of the independent auditor to be an important matter of shareholder concern and is submitting the selection of Deloitte & Touche LLP for ratification by shareholders as a matter of good corporate practice.

The affirmative vote of holders of a majority of the shares of common stock represented at the meeting is required to approve the ratification of the selection of Deloitte & Touche LLP as the Company's independent auditor for the current fiscal year. **THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE PROPOSAL.**

## PROPOSALS OF SHAREHOLDERS FOR 2005 ANNUAL MEETING

Shareholders who, in accordance with Securities and Exchange Commission Rule 14a-8, wish to present proposals for inclusion in the proxy materials to be distributed in connection with next year's annual meeting Proxy Statement must submit their proposals so that they are received at Microsoft's principal executive offices no later than the close of business on June 1, 2005. As the rules of the SEC make clear, simply submitting a proposal does not guarantee that it will be included.

In accordance with our Bylaws, in order to be properly brought before the 2005 Annual Meeting, a shareholder's notice of the matter the shareholder wishes to present, or the person or persons the shareholder wishes to nominate as a director, must be delivered to the Secretary of Microsoft at its principal executive offices not less than 120 nor more than 180 days before the first anniversary of the date of this proxy statement. As a result, any notice given by a shareholder pursuant to these provisions of our Bylaws (and not pursuant to the SEC's Rule 14a-8) must be received no earlier than April 2, 2005 and no later than June 1, 2005, unless our annual meeting date is more than 30 days before or after November 9, 2004. If our 2005 annual meeting date is advanced or delayed by more than 30 days from this year's meeting date, then proposals must be received no later than the close of business on the later of the 90th day before the 2005 Annual Meeting or the 15th day following the date on which the meeting date is publicly announced.

To be in proper form, a shareholder's notice must include the specified information concerning the proposal or nominee as described in our Bylaws. A shareholder who wishes to submit a proposal or nomination is encouraged to seek independent counsel about our Bylaw and SEC requirements. Microsoft will not consider any proposal or nomination that does not meet the Bylaw requirements and the SEC's requirements for submitting a proposal or nomination.

Notices of intention to present proposals at the 2005 annual meeting should be addressed to Secretary, Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052. The Company reserves the right to reject, rule out of order, or take other appropriate action with respect to any proposal that does not comply with these and other applicable requirements.

## SOLICITATION OF PROXIES

The Proxy accompanying this Proxy Statement is solicited by the Board of Directors of the Company. Proxies may be solicited by officers, directors, and regular supervisory and executive employees of the Company, none of whom will receive any additional compensation for their services. Also, Georgeson Shareholder Communications may solicit proxies at an approximate cost of \$17,500 plus reasonable expenses. Such solicitations may be made personally or by mail, facsimile, telephone, telegraph, messenger, or via the Internet. The Company will pay persons holding shares of common stock in their names or in the names of nominees, but not owning such shares beneficially, such as brokerage houses, banks, and other fiduciaries, for the expense of forwarding solicitation materials to their principals. All of the costs of solicitation of proxies will be paid by the Company.

## VOTING PROCEDURES

**Tabulation of Votes:** Votes cast by proxy or in person at the meeting will be tabulated by Mellon Investor Services, LLC.

**Effect of an Abstention and Broker Non-Votes:** A shareholder who abstains from voting on any or all proposals will be included in the number of shareholders present at the meeting for the purpose of determining the presence of a quorum. Abstentions and broker non-votes will not be counted either in favor of or against the election of the nominees or other proposals. Under the rules of the National Association of Securities Dealers and the New York Stock Exchange, brokers holding stock for the accounts of their clients who have not been given specific voting instructions are not allowed to vote client proxies on Proposals 2 and 3 relating to stock plan amendments but are allowed to vote client proxies on other matters.

#### AUDITORS

Representatives of Deloitte & Touche LLP, independent auditor for the Company for fiscal 2004 and the current fiscal year, will be present at the annual meeting, will have an opportunity to make a statement, and will be available to respond to appropriate questions.

#### OTHER MATTERS

The Board of Directors does not intend to bring any other business before the meeting, and so far as is known to the Board, no matters are to be brought before the meeting except as specified in the notice of the meeting. In addition to the scheduled items of business, the meeting may consider shareholder proposals (including proposals omitted from the Proxy Statement and form of Proxy pursuant to the proxy rules of the Securities and Exchange Commission) and matters relating to the conduct of the meeting. As to any other business that may properly come before the meeting, it is intended that proxies will be voted in respect thereof in accordance with the judgment of the persons voting such proxies.

DATED: Redmond, Washington, September 29, 2004.

## EXHIBIT 1

As part of the commitment of the Company and the Board of Directors to good governance practices, the Audit Committee regularly reviews its charter and recommends to the Board changes to the charter. The Board adopted changes to the charter in June 2004 that were effective July 1, 2004.

### MICROSOFT CORPORATION AUDIT COMMITTEE CHARTER

#### ROLE

The Audit Committee of the Board of Directors assists the Board of Directors in fulfilling its responsibility for oversight of the quality and integrity of the accounting, auditing, and reporting practices of the Company, and such other duties as directed by the Board. The Committee's purpose is to oversee the accounting and financial reporting processes of the Company, the audits of the Company's financial statements, the qualifications of the public accounting firm engaged as the Company's independent auditor to prepare or issue an audit report on the financial statements of the Company, and the performance of the Company's internal and independent auditors. The Committee's role includes a particular focus on the qualitative aspects of financial reporting to shareholders, the Company's processes to manage business and financial risk, and compliance with significant applicable legal, ethical, and regulatory requirements. The Committee is directly responsible for the appointment, compensation, retention and oversight of the independent auditor.

#### MEMBERSHIP

The membership of the Committee consists of at least three directors, all of whom shall meet the independence requirements established by the Board and applicable laws, regulations and listing requirements. Each member shall in the judgment of the Board have the ability to read and understand fundamental financial statements. At least one member of the Committee shall in the judgment of the Board be an "audit committee financial expert" as defined by the rules and regulations of the Securities and Exchange Commission, and at least one member (who may also serve as the audit committee financial expert) shall in the judgment of the Board meet the financial sophistication standard as defined by the requirements of the Nasdaq Stock Market, Inc. The Board appoints the members of the Committee and the chairperson. The Board may remove any member from the Committee at any time with or without cause.

Generally, no member of the Committee may serve on more than three audit committees of publicly traded companies (including the Audit Committee of the Company) at the same time. For this purpose, service on the audit committees of a parent and its substantially owned subsidiaries counts as service on a single audit committee.

#### OPERATIONS

The Committee meets at least six times a year. Additional meetings may occur as the Committee or its chair deems advisable. The Committee will cause to be kept adequate minutes of all its proceedings, and will report on its actions and activities at the next quarterly meeting of the Board. Committee members will be furnished with copies of the minutes of each meeting and any action taken by unanimous consent. The Committee is governed by the same rules regarding meetings (including meetings by conference telephone or similar communications equipment), action without meetings, notice, waiver of notice, and quorum and voting requirements as are applicable to the Board. The Committee is authorized and empowered to adopt its own rules of procedure not inconsistent with (a) any provision of this Charter, (b) any provision of the Bylaws of the Company, or (c) the laws of the state of Washington.

#### COMMUNICATIONS

The independent auditor reports directly to the Committee. The Committee is expected to maintain free and open communication with the independent auditor, the internal auditors, and management. This communication will include periodic private executive sessions with each of these parties.



## EDUCATION

The Company is responsible for providing new members with appropriate orientation briefings and educational opportunities, and the full Committee with educational resources related to accounting principles and procedures, current accounting topics pertinent to the Company and other material as may be requested by the Committee. The Company will assist the Committee in maintaining appropriate financial literacy.

## AUTHORITY

The Committee will have the resources and authority necessary to discharge its duties and responsibilities. The Committee has sole authority to retain and terminate outside counsel or other experts or consultants, as it deems appropriate, including sole authority to approve the firms' fees and other retention terms. The Committee will be provided with appropriate funding by the Company, as the Committee determines, for the payment of compensation to the Company's independent auditor; outside counsel and other advisors as it deems appropriate, and ordinary administrative expenses of the Committee that are necessary or appropriate in carrying out its duties. In discharging its oversight role, the Committee is empowered to investigate any matter brought to its attention. Any communications between the Committee and legal counsel in the course of obtaining legal advice will be considered privileged communications of the Company, and the Committee will take all necessary steps to preserve the privileged nature of those communications.

The Committee may form and delegate authority to subcommittees and may delegate authority to one or more designated members of the Committee.

## RESPONSIBILITIES

The Committee's specific responsibilities in carrying out its oversight role are delineated in the Audit Committee Responsibilities Calendar. The Responsibilities Calendar will be updated annually to reflect changes in regulatory requirements, authoritative guidance, and evolving oversight practices. As the compendium of Committee responsibilities, the most recently updated Responsibilities Calendar will be considered to be an addendum to this Charter.

The Committee relies on the expertise and knowledge of management, the internal auditors and the independent auditor in carrying out its oversight responsibilities. Management of the Company is responsible for determining the Company's financial statements are complete, accurate and in accordance with generally accepted accounting principles. The independent auditor is responsible for auditing the Company's financial statements. It is not the duty of the Committee to plan or conduct audits, to determine that the financial statements are complete and accurate and in accordance with generally accepted accounting principles, to conduct investigations, or to assure compliance with laws and regulations or the Company's standards of business conduct, codes of ethics, internal policies, procedures and controls.

Last Revised: July 1, 2004

# MICROSOFT CORPORATION

## AUDIT COMMITTEE RESPONSIBILITIES CALENDAR

| RESPONSIBILITY   | WHEN PERFORMED<br>Audit Committee Meetings |    |    |    |           |
|--|--|----|----|----|-----------|
|  | Q1   | Q2 | Q3 | Q4 | As Needed |
| 1. The agenda for Committee meetings will be prepared in consultation between the Committee chair (with input from the Committee members), Finance management, the General Auditor and the independent auditor.  | X  | X  | X  | X  | X         |
| 2. Review and update the Audit Committee Charter and Responsibilities Calendar annually.   |  |    |    | X  |           |
| 3. Complete an annual evaluation of the Committee's performance.   |  | X  |    |    |           |
| 4. Provide a report in the annual proxy that includes the Committee's review and discussion of matters with management and the independent auditor.  | X  |    |    |    |           |
| 5. Include a copy of the Committee charter as an appendix to the proxy statement at least once every three years.  |  |    |    |    | X         |
| 6. Appoint or replace the independent auditor and approve the terms on which the independent auditor is engaged for the ensuing fiscal year.   |  |    |    | X  |           |
| 7. At least annually, evaluate the independent auditor's qualifications, performance, and independence, including that of the lead partner. The evaluation will include obtaining a written report from the independent auditor describing: the firm's internal quality control procedures; any material issues raised by the most recent internal quality control review, or peer review, of the firm or by any inquiry or investigation by governmental or professional authorities within the past five years, concerning an independent audit or audits carried out by the firm, and any steps taken to deal with those issues; and all relationships between the independent auditor and the Company. |  |    |    | X  | X         |
| 8. Resolve any disagreements between management and the independent auditor about financial reporting.   |  |    |    |    | X         |
| 9. Establish and oversee a policy designating permissible services that the independent auditor may perform for the Company, providing for pre-approval of those services by the Committee subject to the de minimis exceptions permitted under applicable rules, and quarterly review of any services approved by the designated member under the policy and the firm's non-audit services and related fees.  | X  | X  | X  | X  | X         |
| 10. Review the responsibilities, functions and performance of the Company's internal audit department.   |  |    | X  |    |           |
| 11. Review and approve the appointment or change in the General Auditor.   |  |    |    |    | X         |
| 12. Ensure receipt from the independent auditor of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard No. 1, and actively engage in a dialogue with the auditor about any disclosed relationships or services that may impact the objectivity and independence of the auditor, and take appropriate action to oversee the independence of the independent auditor.  | X  |    |    |    |           |
| 13. Advise the Board about the Committee's determination whether the Committee consists of three or more members all of whom are financially literate, including at least one member who has financial sophistication and is a financial expert.   | X  |    |    |    |           |
| 14. Inquire of Finance management, the General Auditor, and the independent auditor about significant risks or exposures, review the Company's policies for risk assessment and risk management, and assess the steps management has taken to control such risk to the Company.  |  |    |    | X  | X         |
| 15. Review with the General Auditor, the independent auditor and Finance management the audit scope and plan, and coordination of audit efforts to ensure completeness of coverage, reduction of redundant efforts, the effective use of audit resources, and the use of independent public accountants other than the appointed auditors of the Company.  | X  |    | X  |    | X         |
| 16. Consider and review with Finance management, the independent auditor and the General Auditor:  |  |    |    |    |           |
| a. The Company's annual assessment of the effectiveness of its internal controls and the independent auditor's attestation and report about the Company's assessment.  | X  |    |    |    |           |
| b. The adequacy of the Company's internal controls including computerized information system controls and security.  | X  |    |    |    |           |
| c. Any related significant findings and recommendations of the independent auditor and internal audit together with management's responses.  |  |    |    |    | X         |
| 17. Review with Finance management any significant changes to GAAP and/or MAP policies or standards.   | X  | X  | X  | X  |           |

**MICROSOFT CORPORATION**

**AUDIT COMMITTEE RESPONSIBILITIES CALENDAR**

|     | RESPONSIBILITY  | WHEN PERFORMED<br>Audit Committee Meetings |    |    |    |           |
|-----|---|--|----|----|----|-----------|
|     |   | Q1   | Q2 | Q3 | Q4 | As Needed |
| 18. | Review with Finance management and the independent auditor at the completion of the annual audit:   | X  |    |    |    | X         |
|     | a. The Company's annual financial statements and related footnotes.   |  |    |    |    |           |
|     | b. The independent auditor's audit of the financial statements and its report thereon.  |  |    |    |    |           |
|     | c. Any significant changes required in the independent auditor's audit plan.  |  |    |    |    |           |
|     | d. Any serious difficulties or disputes with management encountered during the course of the audit and management's response.   |  |    |    |    |           |
|     | e. Other matters related to the conduct of the audit which are to be communicated to the Committee under generally accepted auditing standards.   |  |    |    |    |           |
| 19. | Review with Finance management and the independent auditor at least annually the Company's critical accounting policies.  | X  |    |    |    | X         |
| 20. | Review policies and procedures with respect to transactions between the Company and officers and directors, or affiliates of officers or directors, or transactions that are not a normal part of the Company's business, and review and approve those related-party transactions that would be disclosed pursuant to SEC Regulation S-K, Item 404. |  |    |    | X  | X         |
| 21. | Consider and review with Finance management and the General Auditor:  | X  | X  | X  | X  | X         |
|     | a. Significant findings during the year and management's responses.   |  |    |    |    |           |
|     | b. Any difficulties encountered in the course of their audits, including any restrictions on the scope of their work or access to required information.   |  |    |    |    |           |
|     | c. Any changes required in planned scope of their audit plan.   |  |    |    |    |           |
| 22. | Participate in a telephonic meeting among Finance management, the General Auditor and the independent auditor before each earnings release to discuss the earnings release, financial information and earnings guidance.  | X  | X  | X  | X  |           |
| 23. | Review and discuss with Finance management and the independent auditor the Company's quarterly financial statements.  | X  | X  | X  | X  |           |
| 24. | Review the periodic reports of the Company with Finance management, the General Auditor and the independent auditor prior to filing of the reports with the SEC, including the disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations."   | X  | X  | X  | X  |           |
| 25. | In connection with each periodic report of the Company, review:   | X  | X  | X  | X  |           |
|     | a. Management's disclosure to the Committee and the independent auditor under Section 302 of the Sarbanes-Oxley Act, including identified changes in internal control over financial reporting.   |  |    |    |    |           |
|     | b. The contents of the Chief Executive Officer and the Chief Financial Officer certificates to be filed under Sections 302 and 906 of the Sarbanes-Oxley Act.   |  |    |    |    |           |
| 26. | Monitor the appropriate standards adopted as a code of conduct for the Company.   |  | X  |    |    | X         |
| 27. | Review with the Compliance Officer legal and regulatory matters that may have a material impact on the financial statements, related Company compliance policies and programs, and reports received from regulators.  | X  | X  | X  | X  |           |
| 28. | Develop, review and oversee procedures for (i) receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls and auditing matters, and (ii) the confidential, anonymous submission of employee concerns regarding accounting or auditing matters.                                       |  | X  |    |    | X         |
| 29. | Meet with the independent auditor in executive session to discuss any matters the Committee or the independent auditor believes should be discussed privately with the Audit Committee.   | X  | X  | X  | X  |           |
| 30. | Meet with the General Auditor in executive session to discuss any matters the Committee or the General Auditor believes should be discussed privately with the Audit Committee.   | X  | X  | X  | X  |           |

# MICROSOFT CORPORATION

## AUDIT COMMITTEE RESPONSIBILITIES CALENDAR

| RESPONSIBILITY |  | WHEN PERFORMED<br>Audit Committee Meetings |    |    |    |           |
|----------------|--|--|----|----|----|-----------|
|                |  | Q1   | Q2 | Q3 | Q4 | As Needed |
| 31.            | Meet with Finance management in executive sessions to discuss any matters the Committee or Finance management believes should be discussed privately with the Audit Committee.   |  |    |    |    | X         |
| 32.            | Set clear hiring policies for the Company's hiring of employees or former employees of the independent auditor who were engaged in the Company's account, and ensure the policies comply with any regulations applicable to the Company. |  |    |    |    | X         |

**Microsoft**